S. HRG. 98-1164

OVERSIGHT OF THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980 AND THE BUS REGULATORY REFORM ACT OF 1982

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

OVERSIGHT OF THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980 AND THE BUS REGULATORY REFORM ACT OF 1982

SEPTEMBER 25, 1984

Serial No. 98-112

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

40-576 O WASHINGTON : 1985

S261-16.

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CONTENTS

Page

Opening statement by Senator Danforth 1

LIST OF WITNESSES

Gibson, David N., manager, Transportation Division, Illinois Commerce Commission, on behalf of the National Association of Regulatory Utility Commissioners, accompanied by Charles Gray, assistant general counsel 19
Prepared statement 21
Questions of Senator Danforth and the answers thereto 24
Perry, Susan, vice president, congressional affairs, American Bus Association; K.R. Moore, vice president and director, Bus Division, United Transportation Union, accompanied by J.R. Snyder, national legislative director; and Edward D. Friedman, counsel; and Robert Molofsky, legislative director, Amalgamated Transit Union 41
Prepared statement of Mr. Sherlock 42
Questions of Senator Danforth and the answers thereto 47
Prepared statement of Mr. Moore 49
Questions of Senator Danforth and the answers thereto 52
Prepared statement of Mr. Rowland 55
Questions of Senator Danforth and the answers thereto 58
Ruane, T. Peter, president, National Moving and Storage Association, accompanied by Bobby Gandy, chairman of the board; Robert R.C. Miller, representing the Household Goods Carriers Bureau; and Richard L. Russell, chairman of the board, American Movers Conference, accompanied by Charles C. Irions, president 26
Prepared statement of Mr. Ruane 27
Questions of Senator Danforth and the answers thereto 30
Prepared statement of Mr. Miller 33
Questions of Senator Danforth and Mr. Russell's answers thereto 38
Smith, Brig. Gen. Donald C., U.S. Air Force, Vice Commander, Military Traffic Management Command, Department of the Army, accompanied by Col. Nathan Berkley, Director, Personal Property Directorate; Lt. Col. Clayton M. Kirkland, Acting Director, Passenger Traffic Directorate; and William J. Merrigan, Office of Staff, Judge Advocate 15
Prepared statement 17
Questions of Senator Danforth and the answers thereto 18
Taylor, Hon. Reese, Chairman, Interstate Commerce Commission, accompanied by Ron Young, Director, Bureau of Accounts; Warren McFarland, Director, Office of Compliance and Consumer Assistance; William Southard, Director, Office of Transportation Analysis; Andrew Strenio, Commissioner; and Janice Rosenak, Director, Office of Legislation and Governmental Affairs 2
Prepared statements 5, 9
Questions of Senator Danforth and the answers thereto 14

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Koch, Hon. Edward I., mayor, city of New York, statement 66
McCracken, William L., senior vice president and assistant to the chairman, Greyhound Lines Inc., statement 74
Miller, Fred D., director, Oregon State Department of Transportation, letter of October 16, 1984 79

Page

Scocozza, Matthew V., Assistant Secretary for Policy and International Affairs, Department of Transportation:
Statement 61
Questions of Senator Danforth and the answers thereto 65
United Bus Owners of America:
Statement 71
Questions of Senator Danforth and the answers thereto 73

OVERSIGHT OF THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980 AND THE BUS REGULATORY REFORM ACT OF 1982

TUESDAY, SEPTEMBER 25, 1984

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:37 a.m., Hon. John C. Danforth (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Karen Phillips, professional staff member, Linda Morgan, and Steve Palmer, minority staff counsels.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. This morning the Surface Transportation Subcommittee will hear testimony as to the effects to date of the Household Goods Transportation Act of 1980 and the Bus Regulatory Reform Act of 1982. This is the subcommittee's fourth oversight hearing on the Household Goods Act and the second on the Bus Act.

Both of the pieces of regulatory reform legislation which we are examining today were intended to improve the financial health of their industries, increase competition, and improve service. The testimony received by the subcommittee to date shows that both acts in general are working well. There remain, nevertheless, issues of concern to the household goods moving industry and the intercity bus industry.

We look forward to hearing from our witnesses today, not only to obtain their assessment of the impacts of these two regulatory reform bills thus far, but also to identify the issues of which Congress should be particularly aware as we continue to evaluate the effects to date of motor carrier regulatory reform.

I am delighted again to welcome to the subcommittee the Honorable Reese Taylor, Chairman of the Interstate Commerce Commission.

STATEMENT OF HON. REESE TAYLOR, CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY RON YOUNG, DIRECTOR, BUREAU OF ACCOUNTS; WARREN McFARLAND, DIRECTOR, OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE; WILLIAM SOUTHARD, DIRECTOR, OFFICE OF TRANSPORTATION ANALYSIS; ANDREW STRENIO, COMMISSIONER; AND JANICE ROSENAK, DIRECTOR, OFFICE OF LEGISLATION AND GOVERNMENTAL AFFAIRS

Mr. TAYLOR. Thank you, Mr. Chairman. We are delighted to be here.

Let me begin, if I may, by introducing the people at the table here with me this morning. On my immediate left is our new Commissioner Andy Strenio, who asked to come this morning and I have invited him to sit at the table with us. We are glad to have him on board.

On my far left is Warren McFarland, Director of the Office of Compliance and Consumer Assistance; and on his right is Ron Young, Director of our Bureau of Accounts. On my far right is William Southard, Director of the Office of Transportation Analysis; and on my immediate right is Janice Rosenak, Director of Legislation and Governmental Affairs.

I appreciate this opportunity to appear before you today to testify with regard to the Commission's implementation of the Bus Regulatory Reform Act of 1982 and the Household Goods Transportation Act of 1980 and their impact upon the industries involved and others affected by the legislation.

I would like to begin by discussing the Bus Act. As stated in our testimony at last year's oversight hearing, we believe the act offers a balanced approach by easing entry into new routes, by establishing a more certain procedure for exit from unprofitable service, and by providing bus companies greater flexibility to price their services. In the 2 years since passage of the Bus Act, many firms have come forward to take advantage of the new operational freedoms now available.

In January of this year, the Commission's Office of Transportation Analysis issued a study, entitled "The Intercity Bus Industry," which focuses on the market structure, conduct, and performance of the intercity bus industry and how each of these matters has been affected by the Bus Act. I am submitting copies [1] of this study to the subcommittee as a supplement to the Commission's testimony.

In the entry area, we are pleased to report that the act has had a significant effect. Major carriers have moved to rationalize their route structures. Many smaller carriers have also utilized the new opportunity to enter into or expand existing regular route operations. There has been a dramatic increase in charter services, which require very low startup or capital costs, through the entry of new firms and territorial expansion by existing firms.

The industry has also taken considerable advantage of the rate freedoms contained in the Bus Act. Although fare increases have occurred on certain routes, carriers have also responded to the

[1] The copy has been retained in the Committee files.

more competitive market created by the Bus Act by filing a number of independent rate actions and initiating some innovative discount programs.

As you know, section 17 of the Bus Act gave the Commission authority to review intrastate rates of interstate motor common carriers of passengers. The Commission has received 39 petitions for such review. Thirty-five have been granted, generally on the ground that the carrier's existing intrastate fares are lower, often significantly lower, than its interstate fares for comparable service within the State, without any justification for the disparity. Two of the petitions have been dismissed, one has been denied, and one petition remains pending as of this date.

One of the major concerns with regulatory reform legislation involving any mode of transportation has been the resulting effect on service to small communities. Since enactment of the Bus Act, Greyhound and Trailways have proposed to drop, or have dropped, various points from their intrastate route system.

However, the discontinuances that have occurred were, for the most part, an expected result of the Bus Act, since one of the aims of the act was to provide carriers greater entry and greater exit freedom so they would be able to rationalize their route structures.

The Bus Act provided statutory authority for the Commission, in certain circumstances, to preempt the State regulation of exit from regular route passenger service. The Commission has received 35 petitions for intrastate exit review. The Commission has taken final action in 31 cases. Twenty-eight petitions have been granted, one was granted in part, and two have been dismissed for lack of jurisdiction. The remaining four petitions are still pending.

Let me touch briefly on several other matters related to the impact of the Bus Act. The bus industry did not fare well during the recent recession. However, even though the improving economy and passage of the Bus Act have not yet reversed declining ridership and earnings, the effects of the recession would have been more severe without the reforms included in the act.

The Commission has continued its efforts to assist State and local governments and small carriers to adjust to the changes brought about by the act. In January and February of this year, the Small Business Assistance Office conducted a survey of State regulatory bodies to develop information for the Commission regarding changes that have occurred in bus service since implementation of the Bus Act.

Also, under section 26 of the bus legislation the Commission has been conducting a joint study with the U.S. Department of Transportation on intercity bus terminals and stations. The study is nearly completed. I know we told you that last year, but it really is, and the results should be available soon.

In implementing the Bus Act, the Commission has endeavored to keep in mind congressional intent that the objectives of the national transportation policy can best be met through greater competition and reduced regulation. Clearly, a more competitive environment has already developed, as evidenced by the fact that the bus industry is now affording passengers a variety of improved price and service options.

Turning to the Household Goods Transportation Act of 1980, as we have testified previously, we believe that the impact of the legislation has been positive and that substantial progress has been made in meeting the objectives set by Congress. The Commission has reviewed and revised all of its operational regulations for household goods transportation in accordance with the act, and we are presently in the process of another review of our regulations in light of the experience gained under our current rules.

Meanwhile, pursuant to the act, the Commission is monitoring the operational activities of the household goods transportation industry. A monitoring report on the industry, issued in March 1984, indicated a high level of compliance in many, but not all, areas. However, there is evidence that the majority of carriers studied are committed to and have developed programs which are in keeping with congressional objectives.

The Commission, as permitted by the act, proposed reasonable performance standards for the industry in 1981. However, on further consideration and after reviewing the comments received on the proposed standards, we determined that the adoption of standards would not be of substantial assistance to consumers and that any benefits to be derived would be outweighed by the cost of carrier compliance. As a result, the proceeding was discontinued.

With regard to carrier flexibility in the pricing of services, a wide variety of new price and service options are being offered by a number of household goods carriers. Various forms of discounts and diverse service plans have become widespread and many carriers have entered into negotiated contracts. Binding estimate programs are now quite common, and so are guaranteed service dates and liquidated damage provisions in the event of delayed service.

The financial condition of the industry is much improved. The most recent data show that earnings of the Nation's largest household goods carriers for the 12 months ending June 30, 1984, are significantly higher than last year. In addition, there has been a dramatic decrease in the number of complaints filed against household goods carriers since passage of the act. In fiscal year 1981, there were 11,741 complaints filed, compared to approximately 4,000 in fiscal year 1984, which is almost over.

Last year I mentioned the development of a significant trend toward the use of contracts by household goods moving companies. This trend is continuing. As a marketing tactic, contract carriage appears advantageous, particularly insofar as innovative price strategies are concerned. Several recent Commission decisions may accelerate this trend.

As you know, the Commission has been endeavoring to implement the Household Goods Transportation Act in accordance with congressional intent. It appears that the industry and the public have both benefited from the provisions of the act. The Commission is continuing its study of the impact of the act on carriers and shippers of household goods, and we will of course keep you apprised of further developments.

This concludes my summary remarks, Mr. Chairman, and I will be glad to try to respond to any questions that you might have.

Senator DANFORTH. Thank you very much.

I really have just one question for each of these two areas, and that is should we be changing anything?

Mr. TAYLOR. I really cannot think of anything we should. I think it is going to take some time for the Bus Act to work itself out. There is a lot of adjustment that has gone on. They are really the only transportation industry that has not shown marked improvement as the economy improves. Household goods has outperformed freight carriers and others in the trucking industry, and we are quite proud of those results.

We think both acts are working well, and we think for the time being certainly the Bus Act ought to be allowed to address some of the things that were contemplated when it was passed and enacted. We are quite pleased with the performance to date. I could not suggest any changes at this juncture.

Senator DANFORTH. Thank you very much.

Mr. TAYLOR. Thank you. We are glad to have been here.

[The statements follow:]

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman and members of the subcommittee: I appreciate this opportunity to appear before you today to testify with regard to the Commission's implementation of the Bus Regulatory Reform Act of 1982 and its impact on the intercity bus industry and others affected by the legislation. As stated in our testimony at last year's oversight hearing, we believe that the Bus Act offers a balanced approach by easing entry into new routes, establishing a more certain procedure for exit from unprofitable service, and providing bus companies greater flexibility to price their services. We continue to believe that this approach is the most practical and efficient means available to maintain adequate service, both for the public generally and for the poor, the elderly, the military, and students, who utilize bus service in the greatest numbers.

The Bus Act ended an era of Federal and State regulation of buses that fostered the emergence of two dominant carriers in most long-haul markets and monopoly in many light-density and short-haul markets. Competition, rather than government regulation, is not the primary determinant of fare and service levels in the industry. In the two years since passage of the Act, many firms have come forward to take advantage of the new operational freedoms.

In January of this year, the Commission's Office of Transportation Analysis issued a study, entitled "The Intercity Bus Industry", which focuses on the market structure, conduct, and performance of the intercity bus industry and how each of these matters has been affected by the Bus Act. This staff study was conducted in order to continue and update a 1978 study on the same subject and to aid in assessing the impact of the Bus Act. I am submitting copies of this study to the Subcommittee as a supplement to the Commission's testimony.

Let me begin the discussion of the effects of implementation of the Bus Act by focusing on three key areas—eased entry, rate flexibility in conjunction with limitations on antitrust immunity, and the new exit policy.

ENTRY

We are pleased to report that the Act has had a significant effect on entry. It has allowed many existing firms to rationalize route structures and to offer passengers new services at competitive fares in many regular route markets. In the past, expansion was often based on what regulation permitted, rather than a determination as to which route structures would be the most efficient and profitable additions to an existing route system. Under the Bus Act entry standards, major carriers have moved to rationalize their route structures. Many smaller carriers have also utilized this opportunity to enter into or expand existing regular route operations. There has been a dramatic increase in charter services, which require very low start-up or capital costs, through the entry of new firms and territorial expansion by existing firms.

From the Act's passage until September 1, 1984, 2,892 applications have been filed by new and existing firms for regular route and charter authority. Of this total,

1,749 have been filed by new applicants (60.4 percent) and 1,143 by existing carriers. Thus, it is clear that the entry provisions of the Bus Act are having their intended effect. Approximately 360 of these applications have been for regular route authority, which represents about 12 percent of all applications for permanent passenger authority over this period.

In the area of charter and tour services, low entry costs, as already indicated, have induced many new entrants to take advantage of the Bus Act. More than 2,400 charter applications have been received, and it appears that more than half have been from first-time applicants.

One issue that has arisen in the entry area concerns applications by government-subsidized carriers to operate charter and special services. These carriers may not claim the advantage of the "fitness only" burden of proof normally applicable to privately owned bus lines seeking the same authority. Rather, these applications may be denied if it is found that the proposed service is not consistent with the public interest. The American Bus Association has filed a petition to consolidate seven pending applications of these subsidized carriers.[1] The ABA contends that it is inconsistent with the public interest to grant charter and special operations authority to any applicant which can use its subsidized position to mount potentially unfair competition against carriers operating in private enterprise. Replies have been filed, and the matter is presently pending.

RATES

The industry has also taken considerable advantage of the rate freedoms contained in the Bus Act. Although the major carriers have established a number of discount programs, fare increases have also occurred on certain routes as the industry struggles to overcome its generally weakened financial condition resulting from the recent recession. For example, certain carriers, including Greyhound, elected to take advantage of the zone of ratemaking freedom established by the Bus Act and increased their fares by 2 percent in January 1983. Responding to the more competitive market created by the Bus Act, however, carriers have also filed a number of independent rate actions. The majority of these independent rates have been filed by carrier members of the National Trailways Bus System and Greyhound.

With regard to the rate bureau provisions of the Act, as reported in last year's testimony, the Commission established revised standards and procedures for the bus industry rate bureau in Ex Parte No. 297 (Sub-No. 6). The National Bus Traffic Association has filed an amended agreement in conformity with the Commission's rules; subsequently, comments and a reply by NBTA were filed, and the amended agreement is now under review by the Commission. In this regard, it should be noted that the provisions of the bus legislation which further define the scope of antitrust immunity are largely self-executing, and the bureau and its member carriers must comply with the new legislation while the amended agreement is being considered.

The Commission has testified before this Subcommittee that we see no need for continued antitrust immunity for the collective determination of general rate changes, innovative fare changes, or broad changes in the tariff structure of motor common carriers of passengers. This continues to be our view, and we agree with the recommendation of the Motor Carrier Ratemaking Study Commission that this antitrust immunity should be eliminated.

As you know, Section 17 of the Bus Act gave the Commission authority to review intrastate rates of interstate motor common carriers of passengers. Under this provision, the Commission may prescribe an intrastate rate increase if a carrier has been denied permission to increase the intrastate rate or the State authority has failed to act upon such a request within 120 days, and the Commission determines that the existing rate causes an unreasonable burden on interstate commerce. In Ex Parte No. MC-160, *Procedures for Review of Intrastate Bus Rates*, the Commission adopted rules for processing petitions that seek review of State regulation of intrastate rates of interstate bus carriers.

The Commission has received 39 petitions for intrastate rate review. These petitions have involved 20 states and 12 bus companies; 22 of the petitions were filed by Greyhound and at least five by members of the Trailways System. Thirty-five have been granted—generally on the basis that the carrier's existing intrastate fares are lower (often significantly lower) than its interstate fares for comparable service within the State without valid justification for the disparity, and, therefore, such

[1] Subsequently, the applications of NJ Transit Bus Operations, Inc., and Commission De Transport De La Commuanaute Urbaine De Montreal were withdrawn.

intrastate fares impose an unreasonable burden on interstate commerce. Two of the petitions have been dismissed on grounds of lack of Commission jurisdiction. One has been denied because the applicant failed to comply with relevant statutory and regulatory requirements. One petition remains pending as of this date. Petitions for reopening have been filed in seven of the proceedings; six have been denied and one is currently pending. Finally, eight of the proceedings have been the subject of court actions. One of these cases has been dismissed; one has been remanded on the Commission's own motion; and six are pending court disposition. A list of these intrastate rate cases and their status is attached [2] to our statement (Appendix I).

EXIT

One of the major concerns with regulatory reform legislation involving any mode of transportation has been the effect on service to small communities. In most small communities, buses represent the only form of public passenger transportation available. Nevertheless, studies indicate that the demand for regularly scheduled intercity bus service in rural and small communities is small and has been declining for a number of years. In the decade before passage of the Bus Act, it is estimated that approximately 1800 communities lost all intercity bus service.

Since enactment of the Bus Act, Greyhound and Trailways have proposed to drop or have dropped numerous points from their intrastate route system. In the case of smaller carriers, however, it appears that few are dropping service to points they have been serving. The discontinuances that have occurred were, for the most part, an expected and intended result of the Bus Act, since one of the aims of the Act is to provide carriers both greater entry *and* exit freedoms so they can best reorganize and rationalize their route structures.

In the past, bus carriers have been prevented by State regulatory authorities from dropping many routes which were severely under-utilized and, therefore, unprofitable. In order to address this problem, the Bus Act provided statutory authority for the Commission to preempt State regulation of exit from regular-route passenger service in certain circumstances. The Commission promulgated final rules implementing this provision in Ex Parte No. MC-161, *Preemption of State Regulation of Regular-Route Exit—Motor Passenger Carriers.*

The Commission has received 35 petitions for intrastate exit review. Each involves intrastate transportation being provided on a route over which the carrier was granted authority to provide interstate transportation on or before August 1, 1982. In such instances, the Bus Act requires the ICC to grant a petition for discontinuance unless it finds, on the basis of evidence presented by those objecting, that such discontinuance is not consistent with the public interest or that continuing the transportation will not consitute an unreasonable burden on interstate commerce. The Commission has taken final action in 31 cases: twenty-eight petitions have been granted, one was granted in part, and two have been dismissed for lack of jurisdiction.[3] Four of the petitions were unopposed. However, the State involved appealed one of those unopposed grants on the ground that the underlying discontinuance request had been improperly filed at the State level. This appeal was denied. Two other discretionary appeals from decisions granting petitions have been denied. The remaining four exit petitions are pending final action by the Commission. A list of all intrastate exit cases and their status is attached to this statement (Appendix II).

Since the Commission's intrastate exit review under the Bus Act was a relatively new issue last year, our statement for the oversight hearing included a summary of the action taken in several representative cases. That material will not be repeated here, since the Commission has continued to consider exit petitions based on the same type of evidentiary considerations and under the same statutory standards as discussed in last year's statement.

OTHER ISSUES

In discussing the effects of the Bus Regulatory Reform Act, another factor to be examined is the financial condition of the industry. The bus industry did not fare well during the recent recession. In 1982, net income of Class I carriers fell to its lowest level since 1960. As you know, concern over the industry's financial condition was one of the factors which led to passage of the Bus Act. The recovery has not yet improved carrier profitability. Our latest available information shows the ten larg-

[2] The appendices have been retained in the Committee files.

[3] One of the petitions was denied initially, and subsequently reversed upon consideration of a discretionary appeal filed by the carrier.

est bus companies continuing their downward trend of decreased earnings and ridership. While these companies had a positive net income of $7.9 million in the second quarter of 1983, they reported a $1.4 million operating loss during the second quarter of 1984. This trend is also demonstrated by our data for the 12-month period ending June 30, 1984 compared to the same period ending June 30, 1983. Operating revenues fell 11.4 percent and passengers carried declined 17.1 percent. Net carrier operating loss was $31.7 million compared to a $7.7 million profit for the previous twelve month period, and net income decreased 41.9 percent. A significant portion of the declines can be attributed to a strike at Greyhound Lines during the fourth quarter of 1983.

Although the recent improvement in the Nation s economy and passage of the Bus Regulatory Reform Act of 1982 have not arrested the decline in bus industry ridership and earnings, the effects of the recent recession would have been more severe without the reforms included in the Bus Act. Increased automobile usage, due to the recent economic recovery and stable gasoline prices, and some substantially discounted air fares have contributed to the decline in bus ridership. In addition, last winter's strike at Greyhound also adversely affected the industry. A copy of a summary of the Commission's report on the earnings of the ten largest bus companies for the second quarter of 1984 is attached (Appendix III).

The Commission has continued its efforts to assist local governments and small carriers to adjust to the changes brought about by the Bus Act. As I mentioned in last year's testimony, several publications have been prepared and distributed by the Small Business Assistance Office and the Office of Special Counsel which explain the Bus Act's provisions and provide guidance on applying for authority and participating in Commission proceedings.

In January and February of this year, the Small Business Assistance Office conducted a survey of state regulatory bodies having jurisdiction over intrastate passenger operations, in order to provide the Commission with information concerning any changes that has occurred in bus service since implementation of the Bus Act. Representatives from 45 states participated in the survey. To varying degrees, virtually all the state agencies were familiar with the provisions of the Bus Act, and 36 of the participating states had observed changes in passenger service. Of those, 29 states reported a decrease in services, six had observed an increase in bus operations, and one state noted an increase in rates and fares. Of the 29 states reporting a decrease in service, six reported that replacement service has been sought by new carriers. The percentage of replacement service is generally below 20 percent. On the other hand, ten respondents noted that new forms of innovative passenger operations, such as the use of smaller vehicles or expanded service to and from airports, have materialized in their states during the past two years.

Also, under Section 26 of the bus legislation, the Commission is conducting a study with the U.S. Department of Transportation on intercity bus terminals and stations. Questionnaires have been sent to all ICC passenger carriers and a sample of terminal and station manager. The date received is being analyzed to determine the pattern of ownership, location, and adequacy of the present terminal network. The implications of private vs. public ownership of terminals relative to the present level of competition between bus companies is also being considered.

Moreover, other competitive factors involving terminals and stations are being examined. These include the restrictions which local governments may impose on the location of new terminals and stations, as well as the capacity of the present network of terminals and stations to adequately meet increased service demands resulting from deregulation and eased entry. Finally, the desirability of intermodal terminals and governmental assistance for non-urban bus terminals is also being explored.

This study is near completion, and some tentative findings and conclusions can be made, based on preliminary analysis of the data. The information gathered indicates that 25 percent of all intercity carriers in the industry use bus terminals or stations. Terminals represent a small proportion of the total annual investment of Greyhound and Trailways and a small part of their total annual operating expenses. Analysis of the responses to our questionnaires and available information indicate that, while shared terminals facilitate interlining of passengers, interlining can take place without them. Carriers have had difficulties, in a few instances, in obtaining access to facilities of the two major carriers. However, preliminary analysis shows that the pattern of bus facility ownership and control does not present insurmountable barriers to market entry for the industry as a whole.

CONCLUSION

I would like to conclude by emphasizing that the Commission has moved forward to implement the Bus Regulatory Reform Act, keeping in mind the Congressional findings which emphasize that the objectives of the national transportation policy can best be met through greater competition and reduced regulation. Clearly, a more competitive environment has already developed in the bus industry, which is now responding positively to the operational freedoms provided for in the Act by affording bus passengers improved price and service options.

This concludes my statement, and now I'll be glad to respond to any questions you may have.

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION

THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980

Mr. Chairman and Members of the Subcommittee: Thank you for the opportunity to appear here today to present the views of the Interstate Commerce Commission on the Household Goods Transportation Act of 1980 (the Act). As we have testified previously, we believe that the impact of the Act has been positive, and that substantial progress has been made in terms of fulfilling the purpose of Congress in enacting this legislation.

That purpose, as set forth in the Declaration of Policy, was threefold: (1) reducing unnecessary regulation; (2) strengthening consumer remedies and protections; and (3) establishing maximum carrier flexibility in pricing of service and meeting the needs of shippers. Today, we are reporting on the actions the Commission has undertaken to carry out these legislative objectives, and on the impact of the Act on shippers and the household goods industry. We will also comment on present trends and possible further developments in this industry.

I.C.C. IMPLEMENTATION

In accordance with the specific mandate in section 6 of the Act, the Commission promptly reviewed and revised all of its operational regulations for household goods transportation in Ex Parte No. MC-19 (Sub-No. 36), *Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations)*, 132 M.C.C. 599 (1981). A rulemaking was instituted, comments were received, modifications made, and final rules were promulgated. The rules were appealed to the Seventh Circuit of the U.S. Court of Appeals, which ultimately issued a decision upholding the rules and lifting a stay it had imposed. The rules were reinstated by the Commission and became effective February 1, 1982.

Section 6 of the Act also directs the Commission to minimize its regulations and the paperwork required of the carriers to the maximum extent feasible, consistent with the protection of individual shippers. Accordingly, the Commission has eliminated many unnecessary regulations and has substantially reduced paperwork. For example, most annual performance reports and all notices of agency agreements have been eliminated. Also eliminated was the requirement for filing quarterly reports detailing instances where actual charges for a shipment were either more than 10 percent above or below the initial estimate. To further reduce regulatory burdens, the Commission eliminated 14 financial schedules previously required in the annual reports of Class I and II household goods carriers. Additional carrier work-hour savings have resulted from the Commission's elimination of requirements that (1) carriers obtain signed receipts from shippers stating that they have received certain pre-move information; and (2) more than one weight ticket be completed when both the tare and gross weighings are conducted on the same scale. It should be stressed that the requirements eliminated are those which we believe will reduce paperwork burdens without jeopardizing consumer protection.

The Commission continues its efforts to reduce regulation in implementing the Act. We have reopened the Ex Parte No. MC-19 (Sub-No. 36) proceeding for a review of our household goods regulations in the light of the experience gained under our current rules. Comments from interested parties have been sought on whether any of the present rules are burdensome, unnecessary, inadequate to protect shippers or otherwise inappropriate. Meanwhile, pursuant to the Act, the Commission is monitoring the operational activities of the household goods transportation industry. In March of 1983, our Office of Compliance and Consumer Assistance

(OCCA) instituted a monitoring program to ascertain the level of compliance by the industry with our operational regulations.

OCCA's monitoring report, issued in March 1984, indicated a high level of compliance in many, but not all areas. Although there are some differences in the extent of compliance on specific items as between the small and large carriers, there are also similarities. For example, both groups indicated 87 percent compliance in meeting agreed or guarantee pick up times. On the other hand, the small carriers met only 78 percent of the delivery times, while the large carriers indicated an 83 percent performance record. Both groups were found in violation of requirements to notify shippers of delay: small carriers complied on only 13 percent of the delayed service instances and the large carriers on 25 percent of the moves.

There is evidence that the majority of carriers studied are committed to and have developed programs which are in keeping with Congressional objectives. These include the acceptance of responsibility for controlling the acts of agents. However, the study results suggest that carriers, when providing transportation for the individual household goods shipper, must give further attention to furnishing information concerning carrier complaint and inquiry handling systems, providing written estimates (when used) and Orders for Service, obtaining and maintaining weight tickets where the shipper moves on a weight basis, and notifying shippers when service will be delayed.

Section 5 of the Act provides that each household goods carrier shall be responsible for all acts or omissions of its agents which relate to services performed for that carrier. Each carrier is to use diligence and reasonable care in selecting and maintaining agents who are sufficiently knowledgeable, fit, willing, and able to provide adequate household goods transportation services. The Commission issued a policy statement to remind household carriers that they are responsible for the actions of their agents.

Subsequently, one of the recommendations made by the General Accounting Office (GAO) in its June 10, 1983, report to Congress, entitled *The Household Goods Moving Industry: Changes Since Passage of Regulatory Reform Legislation,* was that the Commission periodically evaluate the various carriers' systems or activities to monitor the quality of their agents' service rather than completely relying on self-regulation by the van lines. In commenting on a draft of the GAO report, the Commission indicated that a specific audit of the programs employed by the carriers to monitor their agents did not appear warranted, considering the substantial decline in complaints, which is discussed later in this statement. However, as the GAO report recognizes,[1] we stated that this facet of carrier operations would be included in our overall household goods monitoring program, and this action has now been taken. Approximately 25 percent of the program is devoted to eliciting information from 44 carriers of varying sizes concerning their monitoring of their agents. Areas involved in the study include the number and capacity of carrier personnel devoted primarily to administering and supervising the agency programs; the quality of carrier instruction in the area of pre-move information; and the extent to which documentary evidence in the carriers' possession demonstrates supervision over the acts and/or omissions of their agents.

The Act provides that, in protecting consumers, the Commission may issue, where appropriate, reasonable performance standards for the transportation of households goods subject to the jurisdiction of the agency. The Commission proposed such standards in Ex Parte No. MC-19 (Sub-No. 36A). However, on further consideration after reviewing the comments, we determined that the adoption of standards at this time would be contrary to consumer interests, impractical and counterproductive, and that the benefits of performance standards to consumers are outweighed by the costs of compliance. Accordingly the proceeding was discontinued on December 6, 1983.

Section 7 of the Act allows households carriers to establish programs to settle disputes with shippers. Such programs must be approved by the Commission and meet certain statutory requirements. Under the programs, claims would be presented before an impartial arbitrator. Most of the major carriers and many small carriers have given notice of their willingness to participate in dispute resolution programs utilizing arbitration. The Movers' and Warehousemen's Association of America, Inc. and the American Movers Conference have Commission-approved programs which are administered by the American Arbitration Association—an independent nongovernmental organization. The Commission believes that the implementation and acceptance of settlement dispute programs will result in fewer complaints and less

[1] See page 39.

Commission involvement. For example, under the American Movers Conference Dispute Settlement Program, 45 carriers are participating members. Most of the major movers belong to this program. From February 1, 1982, to September 1, 1983, 122 requests for arbitration were received from Shippers.[2] To date, 82 of these requests have been resolved through mediation or arbitration, thus demonstrating the ability of the parties to settle their differences without resort to the courts or the Commission.

With respect to the second goal of Congress, strengthening consumer remedies and protections, the Commission adopted rules requiring that: (1) improved, easy-to-read pre-move information be distributed to inform shippers of their rights and responsibilities; (2) shippers be fully and accurately informed of the existence and use of claims dispute resolution programs; (3) all carriers establish specific customer complaint and inquiry handling programs; (4) shippers be permitted to observe any weighing of a shipment; (5) shippers be notified of impending service delays; and (6) carriers continue to permit shippers to obtain delivery of a shipment upon payment of 110 percent of the estimated charges when the shipment moves on a non-binding estimate, and to have at least 30 days to pay any balance due. As stated earlier, the Commission has reopened the Ex Parte No. MC-19 (Sub-No. 36) proceeding to review the need for changes in current rules.

IMPACT OF ACT ON THE INDUSTRY

The third legislative objective calls for carrier flexibility in pricing of service. A wide variety of new price and service options have emerged. Various forms of discounts and diverse service plans have become widespread, and many carriers have entered into negotiated contracts.[3] Binding estimate programs are offered by a number of household goods carriers.[4] These programs may be used to meet competition and to penetrate new markets, thereby providing discounts to individual C.O.D. shippers as well as corporate accounts.

The offering of guaranteed service dates and liquidate damages to the shipper in the event of delayed service is now a common practice. Generally, carriers who offer such guarantees provide for compensation at the rate of $100 to $125 for each day a shipment is delayed in delivery or pickup. Carriers are also developing programs designed to improve customer relations, such as offering post-move assistance to families settling in new communities.

All of the major carriers are offering what is generally referred to as full value liability protection. This is an added option, offered at an additional charge, which differs from the manner in which carriers customarily assume liability for loss and damage. Prior to offering this option, the liability of a carrier was generally limited, with respect to each article in a shipment, to a maximum of the actual cash value of each article as of the date the carrier received it for transportation. Now, under full value liability protection, a shipper has the option of being compensated on the basis of replacement cost, with the result that, if this option is selected, the shipper will be eligible to receive either a new piece of furniture or be paid an amount sufficient to purchase a new piece of furniture to replace the one that was destroyed.

Another objective of the Act was to improve the financial condition of the industry. The most recent data released by the ICC's Bureau of Accounts show that earnings of the Nation's largest household goods carriers for the twelve months ending June 30, 1984 improved, compared to the same period of the previous year. This report also compares the revenues, earnings and traffic volume for the 15 largest household goods carriers for the quarters ending June 30, 1984, and June 30, 1983.

A comparison of results for the twelve months ending June 30, 1983, and June 30, 1982, reveals the following:

Operating revenues rose 21.2 percent.
Revenue tons hauled increased 12.9 percent.
Net carrier operating income rose 47.7 percent.
Net income increased 49.2 percent.

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[2] The American Movers Conference is in the process of updating these figures. The new figures will be available shortly.

[3] ICC grants of contract carrier authority to transport household goods for corporate shippers nationwide were upheld by the U.S. Court of Appeals for the Fifth Circuit in *Global Van Lines, Inc.* v. *I.C.C.*, 704 F.2d 829 (5th Cir. 1983).

[4] There have been some problems associated with the practice of giving "binding" or "guaranteed" rates. In an attempt to resolve this, OCCA has issued Administrative Ruling 132 which is an informal ruling based on what OCCA considers the proper interpretation of the Act in the absence of Commission decisions. We are continuing to study the situation.

Return on shareholders' equity less intangible property increased to 20.08 percent from 15.93 percent.

A comparison of second quarter operations for 1984 and 1983 also shows that:

Operating revenues increased 29.1 percent.

Revenue tons hauled rose 14.9 percent.

Net carrier operating income more than doubled, rising 116.5 percent.

Net income increased 61.3 percent.

ASSESSMENT OF SHIPPER REACTION

The Commission has two primary sources of information which provide a basis for assessing shipper reaction to the innovations taking place in the transportation of household goods. These are: (1) shipper complaints; and (2) the *Moving Service Questionnaire,* which was developed by the Commission for completion by shippers subsequent to their moves as they appraise their carrier's performance. There has been a dramatic decrease in the number of complaints filed against household goods carriers since the enactment of the Act. In fiscal year 1981, there were 11,741 complaints filed, compared to 6,529 complaints filed in FY 1982—a reduction of about 45 percent. For fiscal year 1983, the sharp reduction continued, with 3,584 complaints filed, a 43% reduction from the number received during the prior fiscal year. There has been a slight increase for fiscal year 1984, to 4,000 consumer complaints (projected to the end of September 1984), but complaints remain substantially below pre-Act levels. The overall reduction in complaints, we believe, is indicative of shipper satisfaction with the improvements and diversity of service made possible by the recent legislation.

As we mentioned at the last hearing, the Commission's Office of Transportation Analysis (OTA) has designed a study to determine the impact of the Household Goods Act and the Motor Carrier Act on carriers and shippers of household goods. The study utilizes data from the carriers' annual reports and from questionnaires mailed to carriers (of all classes) and shippers. Specific areas of study include: types of operating authority and uses of that authority; pricing policies such as discounts and contracts; services such as guaranteed pickup and delivery, full value claim protection and settlement; and carrier financial viability and the industry financial structure.

A questionnaire has been sent to all class I and class II carriers holding household goods authority, and a separate questionnaire has been sent to a sample of 504 class III carriers with household goods authority. The shipper sample has also been selected. In addition, OTA has sent a second request to the carriers and completed a telephone canvas of class I and class II carriers in an effort to increase the response rate. OTA is presently in the process of sending out the shipper questionnaire.

Although OTA has not yet completed its final compilation of the carrier questionnaire data received, a preliminary review of the data indicates the following: (1) about 10 percent of all current household goods carriers obtained their authority since the Motor Carrier Act of 1980; (2) there has been a substantial increase in the acquisition of new household goods authority by all classes of carriers either to expand or fill out existing operating areas or to remove previous restrictions (class I—16 of 29 responding carriers obtained household goods authority, class II—29 of 68 carriers, and class III—40 of 138 carriers obtained household goods authority); (3) there has been a substantial increase in the acquisition of other commodities authority by all classes of household goods carriers (class I—23 of 26 carriers obtained other commodities authority, class II—24 of 68 carriers, and class III—22 of 138 carriers obtained other commodities authority); (4) a sizable number of all classes of carriers do not use their household goods authority; (5) approximately 75 to 80 percent of all class III carriers are agents of class I and class II carriers; many of these class III carriers either do not have or do not use their own authority; (6) there has been a considerable increase in the use of contracts, discounts, and binding estimates; (7) full value protection appears to be offered by most carriers and used by most shippers; and (8) guaranteed delivery and pickup has increased rapidly.

The Motor Carrier Act and Household Goods Act of 1980 were enacted about the same time that the economy went into a severe recession. As a result, it is difficult to determine the precise impact of the Acts on the financial condition of the industry. However, available information indicates that: (1) household goods carriers fared much better during the recession than did other motor carriers of property; (2) household goods carriers rebounded rapidly in 1983, and further improvements have been experienced in 1984; and (3) none of the largest household goods carriers has gone bankrupt, nor are there indications that a large number of small carriers have gone out of business.

PRESENT TRENDS AND FUTURE DEVELOPMENTS

Since enactment of the Household Goods Transportation Act, there has been new entry into the industry, and as the economy continues to improve, we expect new entry to further increase. Existing carriers have substantially expanded their operations in an effort to reduce costs through efficiency improvements. These cost reductions and the greater competition made possible by new entry result in better service at less cost to the public.

Last year, we mentioned the development of a significant trend toward the use of contracts by household goods moving companies. This trend is continuing. As a marketing tactic, contract carriage appears advantageous, particularly insofar as innovative pricing strategies are concerned. Several recent Commission decisions may accelerate this trend. In Ex Parte No. MC-165, *Exemption of Motor Contract Carriers From Tariff Filing Requirements*, 48 FR 24388 (June 1, 1983), the Commission granted the exemption of tariff filing requirements to all motor contract carriers of property. Although this decision was initially stayed by the Court, the District of Columbia Circuit of the U.S. Court of Appeals subsequently lifted the stay on September 28, 1983, and the Commission's exemption order is now in effect. As a result, more common carriers have applied for contract carriage authority.

The Commission has also granted contract authority to a household goods carrier authorizing it to serve a generic class of household goods shippers where the particular shippers are not named in the permit. The effect of this decision is to allow the carrier to solicit additional customers without having to return to the Commission for permission to serve each new customer obtained. This decision was appealed and judicially stayed. Oral argument has been held and we are awaiting the court's decision. (*Global Van Lines, Inc.* v. *ICC*, No. 83-1938 (D.C. Cir. 1983), seeking review of Docket No. MC-1745 (Sub-No. 17), *Interstate Van Lines, Inc., Extension—Household Goods*).

As previously reported, in No. MC-F-15004, *Atlas Van Lines, Inc., et al.—Pooling Application* (not printed), decided July 15, 1983, Atlas Van sought approval of a pooling arrangement with its agents to supplant an existing agreement which allowed the latter to hold unrestricted operating authority. Under the new plan, the agents would not be allowed to retain their broad authority. The Commission approved the application and found that Atlas was under no obligation to pool traffic with any carrier. Opponents of the application failed to rebut the statutory presumption that the new pooling plan was in the public interest. The Commission's decision has not been appealed.

In a related proceeding, No. MC-F-14784, *Atlas Van Lines, Inc.—Pooling*, 127 M.C.C. 799 (1983), the Commission determined that it lacked jurisdiction over an earlier proposal of Atlas to deal exclusively with non-carrier agents. The Commission found that this previously proposed policy of Atlas to deal only with non-carrier agents was not a pooling agreement requiring our prior approval under 49 U.S.C. § 11342.

A number of Atlas' agents appealed this decision in *Rothery Storage and Van Co., et al.* v. *Interstate Commerce Commission and United States of America*, No. 83-1210 (D.C. Cir.). After briefing, the parties, on February 3, 1984, entered into an agreement to dismiss the petition.

In a separate proceeding, Nos. MC-F-4901 and 6152, *United Van Lines, Inc.—Pooling Agreement Modification* (not printed), decided May 25, 1984, (served June 5, 1984) the Commission approved modification of a pooling agreement between United and its carrier-agents which had the effect of limiting the geographic scope of its agents' authority. Under the new agreement, the agents are precluded from handling traffic moving more than 1,700 miles under their own authority. Previously, United had permitted its agents to elect to handle this long-haul traffic under one of three hauling options which the agents chose on an annual basis. The Commission rejected arguments advanced by a number of carrier-agents that the proposal was of major transportation importance and that it would adversely affect competition in the household goods industry. The Commission noted that in the past only four agents out of a total of 228 had chosen the long-haul option. Further, the Commission pointed out that the majority of United's stockholders were carrier-agents, and that the proposal had been approved by a Board of Directors whom they had elected. By decision dated June 27, 1984, the Commission denied a petition to stay its decision pending judicial review and permitted United to implement the modification 30 days from date of service of that decision (July 2, 1984). Subsequently, judicial appeals were filed by two of United's agents in *Three Way Corporation* v. *United States and ICC*, No. 84-1280 (D.C. Cir. docketed July 5, 1984) and *Budd Moving System, Inc.* v. *United States and ICC*, No. 84-1282 (D.C. Cir. docketed July 10, 1984)

both involving review of Docket Nos. MC-F-4901 and MC-F-6152, *United Van Lines, Inc.—Pooling Agreement Modification.* The United States Court of Appeals for the District of Columbia Circuit denied *Three Way*'s motion to stay the Commission's decision. The case has not yet been briefed on the merits.

As you know, the Commission is dedicated to implementation of the Household Goods Transportation Act in accordance with Congressional intent. The Commission has and is continuing to eliminate unnecessary regulations and is encouraging flexible, responsive, and innovative pricing. It appears that the industry and the public have both benefitted from the provisions of the Act. We will, of course, keep you apprised of further developments and will recommend additional legislative changes as they appear warranted.

This concludes my prepared remarks, and now, Mr. Chairman, I will be happy to answer any questions you may have.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR DANFORTH AND THE ANSWERS THERETO

Question. Some critics charge that the ICC is not implementing the Household Goods Act and the Bus Act in accordance with the law, but rather is engaging in administrative deregulation of these industries. What is your response to this charge?

Answer. The Commission has endeavored to faithfully implement both the Household Goods Act and the Bus Act according to Congressional intent, and we believe we have done so successfully. Our record in court proceedings subsequent to passage of these Acts supports our view that the Commission's implementation has been in accordance with the law. As stated in our testimony, we believe enactment of these measures and our implementation of them have resulted in increased competition and more efficient and economical operations by carriers. This, in turn, has led to the availability of a wide variety of price and service options to the benefit of shippers and passengers.

Question. In a statement submitted for the record for this hearing, Greyhound voices its support for total deregulation of the intercity bus industry. Do you support total deregulation of the bus industry?

Answer. The Bus Regulatory Reform Act has only been in effect for two years, and it is important that the impact of this legislation on the industry and the public be carefully assessed before considering further legislation. We believe that the Bus Act is working well. While we support the ultimate deregulation of the bus industry,[5] we believe that it would be helpful to allow the regulatory transition from the Bus Act to be completed before contemplating further legislative change.

Question. Do you believe that any of the ICC's regulations governing the household goods moving industry continue to serve any useful purpose?

Answer. We believe that our regulations, in most instances, serve a useful purpose. For example, our regulations designed to protect shippers (such as the requirement that easy-to-read, pre-move information be distributed to inform shippers of their rights) are clearly beneficial, as is our requirement that a shipper be notified of delays in delivery. As mentioned in our prepared testimony, we are currently reviewing our regulations to see if any additional changes are necessary.

Question. In your view, what are the most significant benefits to date of the Household Goods Act and the Bus Regulatory Reform Act?

Answer. We believe one of the most significant benefits of the Household Goods Act is the wide variety of new price and service options that are now available to meet the needs of shippers. These have made a significant contribution to the improved financial condition of the industry. The infusion of new entrants into the industry and the expanded operations of existing carriers have resulted in efficiency improvements and greater competition, thereby benefiting the public through better service at less cost. In addition, the consumer protection provisions of the Act have provided individuals with important protection that they otherwise would not have.

In the bus area, the most significant benefit has been the increased flexibility which bus companies now have to structure their rates and route systems in ways that more accurately reflect the demand for their services. In addition, the entrance of new competitors has led to numerous discount fare programs which have benefited the traveling public. In particular, there has been an enormous increase in the

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[5] Commissioner Simmons reserves judgment on the desirability of total deregulation pending further experience under the Bus Act.

number of carriers offering charter service, and that segment of the industry is healthy and growing.

Senator DANFORTH. Our next witness is Brig. Gen. Donald C. Smith, U.S. Air Force. General Smith is Vice Commander of the Military Traffic Management Command.

[Pause.]

Senator DANFORTH. General, thank you very much.

STATEMENT OF BRIG. GEN. DONALD C. SMITH, U.S. AIR FORCE, VICE COMMANDER, MILITARY TRAFFIC MANAGEMENT COMMAND, DEPARTMENT OF THE ARMY, ACCOMPANIED BY COL. NATHAN BERKLEY, DIRECTOR, PERSONAL PROPERTY DIRECTORATE; LT. COL. CLAYTON M. KIRKLAND, ACTING DIRECTOR, PASSENGER TRAFFIC DIRECTORATE; AND WILLIAM J. MERRIGAN, OFFICE OF STAFF, JUDGE ADVOCATE

General SMITH. Thank you, sir. Good morning. I am Brig. Gen. Don C. Smith, Vice Commander of Military Traffic Management Command. On my far right is Mr. Merrigan, next to me on my right is Colonel Berkley, and on my other side is Colonel Kirkland, members of my staff.

The Department of Defense appreciates this opportunity to make a statement and answer questions regarding the Household Goods Transportation Act of 1980 and the Bus Regulatory Reform Act of 1982. MTMC operates the worldwide household goods program for the Department of Defense. It establishes programs and policies, centrally negotiates all rates, and continuously monitors the program. The military services execute the program through their nearly 300 shipping offices around the world, following the policies, regulations, and procedures established by MTMC.

The detailed statement I have submitted for the record presents a synopsis of the Defense Department's experiences with the moving industry since the passage of the Household Goods Transportation Act of 1980. The stated purposes of the act have assisted the Department of Defense in saving taxpayer dollars, while providing the best possible moving service for military members. These purposes are:

One, fostering competition; two, protecting shippers; and three, reducing unnecessary regulation.

These areas are addressed specifically in the statement and general comments concerning deregulation are offered. The Defense Department has experienced more rate competition among carriers since passage of the act. Our own adjustments to the act comply with the letter and spirit of the Household Goods Transportation Act of 1980 by promoting independent pricing, protecting the shipper, and reducing paperwork.

The DOD reweigh program is working. It benefits the Government, the taxpayer, and most importantly, the service member. The individual carriers appear to be satisfied, and we have avoided approximately $3 million in additional costs this year by utilizing our own reweigh rule.

In conclusion, the Household Goods Transportation Act of 1980 has fostered competition, provided protection for the shipper, and enabled individual carriers to operate in an independent manner.

Most importantly, it has enhanced the Department of Defense's ability to procure quality moving services at the lowest overall cost to the taxpayer.

To date, the Department of Defense has experienced no problems with motor bus service as a result of the Bus Regulatory Reform Act. There has been an increase in the number of bus carriers, with increased competition in both charter and scheduled service.

Sir, I appreciate the opportunity to appear before the committee today and I am happy to answer any of your questions.

Senator DANFORTH. General, thank you very much.

Some industry witnesses the last time we had a hearing were concerned about DOD's rate solicitation procedures. Today, industry witnesses will express concern about the military's storage of household goods procedures. Do you have any comments on those two areas?

General SMITH. Well, I think we have been on the record before, but the rate solicitation essentially will allow the carriers to set their own rates. In other words, we give them a baseline on the solicitation and they can either take a percentage of that higher, lower, or the same. So with that regard, I think it is a very fair program. We allow the carriers themselves to set their rates, essentially.

As far as the storage program, we agree with the ICC. We think it would be very costly for the Department of Defense to get into that area. As far as storage of household goods in Government, was that the second part of your question?

Senator DANFORTH. Yes. I did not hear your answer, I am sorry.

General SMITH. I said we agree with the ICC, the Interstate Commerce Commission, on that. In other words, we think it may be very costly at this time to get into the Government managing the warehouses.

Senator DANFORTH. So you do not favor that?

General SMITH. Not at this point.

Senator DANFORTH. I thought it had been proposed by somebody.

Colonel Berkley: There was a study, sir, by GAO, which came in to look at some of our programs. There were two things that they looked at in that study, the automation of the ITO's, the transportation offices in the field—and we are progressing with that very rapidly, so they were quite satisfied on some of our effort there.

But they did address about the potential of using Government facilities for storing shipments that came in on a temporary basis that were stored up to either 90 or 180 days. And we have only received a draft of that, and we had some questions on some of their figures and provided some information back to them, and they are looking at those figures again. And so we have really not received the report from them, because they are also looking at the information that we gave and they are going to probably adjust their report.

So we are really kind of handicapped to make any official comment against a report we have not seen other than in a draft. But we are concerned with going to Government facilities, with the cost, when there is already an industry out there that can provide that service, and for the liability aspect from pickup to destination, that would be broken if you went into a Government warehouse.

Senator DANFORTH. Thank you very much.
General SMITH. Thank you, Senator.
[The statement follows:]

STATEMENT OF BRIG. GEN. DONALD C. SMITH, U.S. AIR FORCE, VICE COMMANDER, MILITARY TRAFFIC MANAGEMENT COMMAND, DEPARTMENT OF THE ARMY

Mr. Chairman, members of the Committee, I appreciate this opportunity to appear before the Committee to make a statement and answer your questions regarding the "Household Goods Transportation Act of 1980" and the "Bus Regulatory Reform Act of 1982." I am the Vice Commander of the Military Traffic Management Command (MTMC). One of the Command's functions is to manage household goods shipments worldwide for the military and civilian personnel of the Department of Defense (DOD). The DOD relies on commercial carriers for this transportation and has a responsibility to comply with the Act and promote policies which further the Act.

The DOD is the Nation's largest single shipper of personal property with 584,000 shipments thru the 3rd Qtr FY 84, and we project over 800,000 shipments will be moved in fiscal year 1984 at a cost of one and one quarter billion dollars. This is the 4th consecutive year we had over 750,000 shipments and over a billion-dollar Personal Property Program. Due to the magnitude of the personal property program, the DOD has established procedures for the selection of carriers, distribution of traffic, computation of charges, and quality control. The DOD uses those carriers with operating authority from the Interstate Commerce Commission (ICC). This traffic is distributed in such a manner as to reward carriers who provide quality service at the lowest overall cost. The rates DOD pays are submitted voluntarily by commercial carriers. A program of this magnitude requires an effective quality control program at both the local and national level.

Our goal in managing this program is to obtain the highest quality service possible at the lowest overall cost to taxpayers. Accomplishing this goal is a delicate task, due to the morale implications of moving member's personal possessions successfully within budgetary restraints. The quality of personal property moves has a direct effect on the quality of life of service members and their families. Good moves keep families happy and contribute to the reenlistment and retention of our highly trained people within each of the military services. Recent improvements in the program are reflected in a current downward trend in the number of complaints from service members. It is an important program which requires continuous and intensive management.

The DOD makes extensive use of the nation's commercial bus system for transportation of its personnel. In fiscal year 1983, the DOD moved approximately 2.4 million passengers by bus at a cost of $30,000,000. Of this total, about half was in scheduled service and half in charter service.

HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980

The Household Goods Transportation Act of 1980 has had a considerable impact upon the moving industry. Of particular significance to the Defense Department are those provisions which foster competition, emphasize protection of shippers, and reduce unnecessary regulation. Since passage of the Act, MTMC has undertaken several actions directly with individual carriers in order to increase competition. MTMC has modified the procedures used to acquire rates for the intrastate and interstate shipment of household goods.

Our modification entailed issuance of an MTMC solicitation which contains baseline transportation rates, additional service rates, and uniform rules which carriers can use for independent pricing. The industry responds with individual carrier quotation of rates. There are two major reasons, each equally important, for the modification. The first is the significant advantages which lie in DOD's control over and management of its own solicitation document. The second reason is that MTMC's use of its own solicitation document brings DOD household goods transportation procurement much more in line with Federal procurement regulations and policies.

We have adjusted to the spirit and letter of deregulation legislation through fostering competition by independent carriers' action, and reducing paperwork.

Carriers now may submit any "percentage of" the baseline rates contained in our solicitation. MTMC's filing instructions are advantageous to the industry in that a carrier not only is permitted to specify his own rates during the rate submission period, but also may agree to provide service at another carrier's rates during the rate equalizing period, and share equally in the tonnage awarded at that rate level.

This policy has been employed by MTMC in other household goods transportation programs.

Our procedures also reduce paperwork by replacing, at a minimum, three publications issued by three separate rate bureaus and, at a maximum, up to 657 publications issued by individual carriers.

CONTROL AND MANAGEMENT

Under the Armed Services Procurement Act (10 U.S.S. SS 3201-2316), we are required to stress competition in the procurement of services for the DOD, and to make awards which will be most advantageous to the United States, with due consideration to price and other factors. Our program conforms to federal procuren ent policies.

The Department of Defense reweigh program was established to insure accurate determination for weights of personal property shipments. We content that the correct and accurate weight of a reweighed shipment is the lower of the two weights, and we pay the carriers on the basis of that lower weight. This policy has been upheld by ICC and Federal Court. The goals of the program are to conserve taxpayers' dollars by insuring that DOD only pays for the actual shipment weight and to protect service members from paying unwarranted excess weight charges. Specifically, the objective is to reduce the incidence of weight discrepancies from the current 21-22 percent to 10-12 percent worldwide. This program increases the morale of our members and saved the Government an estimated 3.0 million dollars in additional costs in FY 83 alone. The program is working, and we have had no significant complaints from carriers on problems in reweighing DOD personal property shipments.

The Household Goods Transportation Act of 1980 continues to have a positive impact on DOD. It has increased competition, helped to protect the Government as a shipper, and reduced unnecessary regulation. Carriers are permitted to market their service aggressively, providing desirable opportunities for both carriers and shippers. Carriers now have the flexibility to provide good service to individual shippers and meet specific demands for quality and price. The Act encourage shippers to deal directly with individual carriers and offers a unique opportunity for increased competition. These factors enhance the Defense Department's ability to procure quality transportation services at a reduced cost to the taxpayer. We believe the Act fosters competition and improved service.

THE BUS REGULATORY REFORM ACT

To date, the DOD has experienced no problems with the levels of service provided by motor bus carriers in either scheduled or charter operations as a result of the Bus Regulatory Reform Act. There has been a substantial increase in the number of carriers doing business with the Department, particularly in charter service, and it appears the increased competition has had a beneficial cost effect for the DOD.

Mr. Chairman, thank you for this opportunity to present a statement to the Committee. I will be happy to answer any question.

[The following information was subsequently received for the record:]

NOVEMBER 19, 1984.

Hon. JOHN C. DANFORTH,
Chairman, Subcommittee on Surface Transportation,
U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: This responds to your letter of September 29, 1984, containing followup questions to the Military Traffic Management Command's (MTMC) testimony at the Surface Transportation Subcommittee's hearing on oversight of the Household Goods Transportation Act of 1980 and Bus Regulatory Reform Act of 1982.

I am quite pleased with the advances we have made in providing high quality household goods service for members of the Department of Defense (DOD). MTMC's personal property program has made substantial progress but there is still work to be done. Quality of service indicators show a strong upward trend. Statistics captured under the domestic-oriented Carrier Evaluation and Reporting System reveal that incidence of loss and damage has decreased from 32 percent during the period May-October 1982 to 27.8 percent during the period November 1983-April 1984. In the international arena, we have seen dramatic improvement in getting household goods to our service members in an expeditious manner.

In January 1983, MTMC instituted the Required Delivery Date (RDD) Improve-

ment Program for overseas rate areas. On that date, only 59 percent of all household goods shipments destined to overseas areas met the RDD. The impetus of the RDD program stimulated a dramatic improvement in the RDD rate, which stood at almost 80 percent in July 1984.

MTMC successfully implemented the interstate household goods rate solicitation on May 1, 1984. This solicitation includes baseline rates and charges for household goods shipments within the continental United States. Household goods carriers file rates every 6 months. On November 1, 1984, Alaska was added to this program.

Seven states are currently in MTMC's intrastate program (Arizona, California, Colorado, Idaho, Florida, Maine, and Wisconsin). The General Accounting Office has completed a review of the program. The preliminary report favored expansion of the program. The final report is scheduled to be released during December 1984.

Successful implementation of the intrastate and interstate programs increased control and improved management on the procurement of household goods rates. The rules and rates are provided in a uniform document for each program, and MTMC deals directly with the carrier, rather than bureaus and associations. Approximately 1.2 million rates were recently submitted by 460 carriers under independent pricing procedures.

The Bus Regulatory Reform Act of 1982 has also been beneficial for DOD. The Act permits easier entry of new carriers into the market and more competition. As a result, the number of carriers eligible to do business with the DOD, particularly in charter service, has increased. The evidence indicates the increased competition has had a moderating effect on the rate of growth in the cost of moving DOD passengers by bus.

I trust this responds to your concerns.

Sincerely,

DONALD C. SMITH,
Brigadier General, U.S. Air Force,
Vice Commander.

Senator DANFORTH. Our next witness is David Gibson, manager, transportation division, Illinois Commerce Commission, representing the National Association of Regulatory Utility Commissioners.

STATEMENT OF DAVID N. GIBSON, MANAGER, TRANSPORTATION DIVISION, ILLINOIS COMMERCE COMMISSION, ON BEHALF OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, ACCOMPANIED BY CHARLES GRAY, ASSISTANT GENERAL COUNSEL

Mr. GIBSON. Thank you, Mr. Chairman.

Before I proceed, may I introduce this gentleman to my right. His name is Charles Gray. He is counsel with the National Association of Regulatory Utility Commissioners.

I appreciate the opportunity to be here this morning to talk about the impacts of the Bus Act 2 years since passage. As you mentioned, Mr. Chairman, I am appearing today on behalf of the Illinois Commerce Commission and the National Association of Regulatory Utility Commissioners. NARUC is a quasi-governmental, nonprofit organization of regulatory bodies of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

With your permission, Mr. Chairman, in the interest of conserving time, I would like to enter my written remarks into the record. I would, though, like to summarize my statement by saying first that bus regulation at the Federal and State level must be responsive to the needs of the industry and the public they serve.

The Bus Regulatory Reform Act of 1982, after 2 years, can in my opinion be judged successful in producing dynamic, flexible, and less burdensome regulation. Increasingly, better regulatory decisions are being made far more expeditiously than before passage of the Bus Act. State regulators particularly have had to recognize

that traditional regulatory solutions to fare and service problems are no longer either legal or appropriate. We recognize that in most areas the competitive market itself is a far more efficient regulator in ensuring reasonably priced bus service.

It has long been NARUC's view that as economic regulation winds down, State regulators should assume the role of using their expertise not to regulate, but to promote intercity bus service. We were concerned that an immediate consequence of going from a tightly regulated bus system to a system directed more by the competitive market would be widespread abandonment of service, particularly to rural America.

We have heard that since the act went into effect nearly 2,000 communities nationwide have lost their last remaining form of commercial intercity transportation. In Illinois, in the same period over 140 communities have lost service, and we have predicted another 100 to 200 will suffer the same fate.

The fact that the intercity bus network is contracting is an obvious and logical consequence of regulatory reform. System rationalization was intended by Congress as absolutely necessary if financial health was to be restored to the intercity bus industry.

We as States do not view service abandonment as a flow in regulatory reform. Rather, we see it as an opportunity. But as the act is currently constructed, that opportunity will be extremely difficult to realize. The act in NARUC's opinion is incomplete in that it does not give States sufficient time to analyze proposed abandonments and then to locate subsequent carriers and service.

While we support the Bus Act, we still think the will of Congress could be served by a slight amendment to the act. As you may know, NARUC supported legislation introduced last October, known as the prior notice amendment. Senate 1916, which was sponsored by Senator Charles Percy of Illinois, would selectively amend the Bus Act in a way to provide the States with the tools necessary to promote intercity bus service.

Since the amendment was introduced, we have worked directly with all State regulatory commissions, the Interstate Commerce Commission, the American Bus Association, and the United Bus Operators of America. While the States remain totally supportive of the prior notice amendment, the bus industry remains opposed to prior notice, even after we agreed to drop all of the provisions they considered most objectionable.

In summary, Mr. Chairman, the States recognize bus regulatory reform as reality. As a consequence, State regulators must deemphasize traditional regulatory approaches and reemphasize those tools and expertise that can be used to promote intercity bus service. We feel that prior notice is still needed and urge your support.

Mr. Chairman, that concludes my presentation. I would be more than happy to answer any questions you may have.

Senator DANFORTH. Thank you, Mr. Gibson.

Let us suppose that there was prior notice. What would you envision being done by the State officials?

Mr. GIBSON. Mr. Chairman, I have spent the last year and a half meeting with all State regulatory agencies to discuss a number of things, not the least of which is how they would use prior notice if given prior notice information. I have been assured by most of

them that prior notice information would be used by them for the purpose of promoting intercity bus service.

The industry, as you may know, has the fear that in a lot of States prior notice information would be used as a club against the bus company wanting to abandon a service. I do not feel that is the case. I think the States again recognize that the Bus Act is a reality, that any decision made at the State level is appealable to the Interstate Commerce Commission, and, that being the case, prior notice information will be used to promote, rather than to regulate.

Senator DANFORTH. How so? I mean, let us suppose there is a community of 10,000 people and it is now being served by Trailways and they want to stop serving it. Then what would be done?

Mr. GIBSON. Mr. Chairman, I would cite as an example a route in southern Illinois. Greyhound Lines gave Illinois advance notice that they were going to abandon service between East St. Louis and Vicennes, IN. Armed with that information, we met directly with all communities affected, studied information that Greyhound supplied us, and just recently prepared a report that shows what kind of market potential, if any, there is along this route.

This particular study shows that there is potential and that, while Greyhound may find the potential not sufficient to justify continued operations, the information can be used and is now being used to attract substitute carriers. In short, then, what one company might consider to be unprofitable and perhaps hopelessly unprofitable, some other carrier, new or existing, might find potential in the market and be willing to serve and provide substitute service.

Senator DANFORTH. OK, thank you very much, sir.

Mr. GIBSON. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF DAVID N. GIBSON, MANAGER—TRANSPORTATION DIVISION, ILLINOIS COMMERCE COMMISSION, ON BEHALF OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Thank you, Mr. Chairman. My name is David N. Gibson and I am the Manager of the Transportation Division of the Illinois Commerce Commission. I am appearing today on behalf of both the Illinois Commerce Commission and the National Association of Regulatory Utility Commissioners (NARUC). NARUC is a quasi-governmental, non-profit organization of regulatory bodies of the fifty states, District of Columbia, Guam, Puerto Rico, and the Virgin Island.

I appreciate the opportunity to appear before the Senate Commerce Committee's Subcommittee on Surface Transportation to present the views of the States at this oversight hearing on the Bus Regulatory Reform Act of 1982.

The Bus Act went into effect on November 19, 1982 and it is instructive to see what has happened to bus service in that two year period. By far the most important single factor has been the elimination of service to so many communities in rural America. The Motor Carrier Ratemaking Study Commission concluded that the loss of the last form of public transportation to these communities was nothing to be concerned about because they have so little of it to begin with. In one sense that is correct, since a minimal level of service such as one bus per day to a community is not likely to be attractive enough to generate a substainable ridership. In another sense, however, that minimal level of service becomes extremely important to small communities precisely because it is the last service available. The number of persons who use the bus at those minimal levels of service may be few in number but the trips that they do take on the bus are extremely important. Often the users are elderly who make use of the bus for the purpose of visiting doctors or family in larger cities some distance away. The minimal bus service available to them may still represent their only means of intercity transportation.

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Once again this year the American Association of State Highway and Transportation Officials (AASHTO) and NARUC are collaborating on a survey which attempts to quantify the impacts of the Bus Act nationwide. I understand that this will be completed in October. For the record, howeve, I can give you some of the impacts which have occurred in the State of Illinois since the Bus Act went into effect. The following lists summarize impacts of the Bus Act and the Interstate Commerce Commission's interpretation of the Act on the Illinois bus system. The first list shows the communities which had bus service just prior to passage of the Bus Act and which no longer have service as routes were abandoned and as communities were deleted from schedules. The second list shows those communities which had no service prior to the Bus Act and which now have it. The imbalance is fairly clear: 143 cities lost all of their service while only two communities are newly served.

Illinois Communities which have lost all service:

1. Addieville
2. Allenville
3. Alton
4. Argenta
5. Ashton
6. Aurora North
7. Braceville
8. Braceville
9. Brownstown
10. Byron
11. Carlinville
12. Carterville
13. Chenoa
14. Clifton
15. Colp
16. Culter Jct.
17. East Moline
18. Elwood
19. Fulton
20. Gardner
21. Glenview
22. Grand Detour
23. Hagerstown
24. Harrisburg
25. Industry
26. Kansas
27. Kinmundy
28. Lexington
29. Maroa
30. Martinsville
31. Milan
32. Mt. Zion
33. Nashville
34. New Memphis
35. Okawville
36. Orion
37. Philadelphia
38. Pocahontas
39. Princeville
40. Rockton
41. St. Elmo
42. Shannon
43. Stark Station
44. Stonington
45. Texas City
46. Towanda
47. Viola
48. Wilmington
49. Addison
50. Alma
51. Andover
52. Ashland
53. Atlanta
54. Beardstown
55. Bloomingdale
56. Braidwood
57. Brownsville
58. Cambridge
59. Carmi
60. Casey
61. Cherry Valley
62. Clinton
63. Cordova
64. Dalton City
65. Edwardsville
66. Energy
67. Gardena
68. Gibson City
69. Goodhope
70. Greenup
71. Hampton
72. Hervey City
73. Jacksonville
74. Keeneyville
75. Lafayette Jct.
76. Marengo
77. Marshall
78. Mascoutah
79. Morrisonville
80. Muddy
81. Neoga
82. Norris City
83. Onarga
84. Paxton
85. Pingree Grove
86. Port Byron
87. Rapids City
88. Roscoe
89. St. Jacob
90. Smithboro
91. Staunton
92. Sullivan
93. Thompson
94. Troy
95. Watertown
96. Wyoming
97. Albany
98. Altamont
99. Arcola
100. Ashmore
101. Auburn
102. Beecher
103. Bluff Springs
104. Browns
105. Buckley
106. Cantrall
107. Carriers Mills
108. Chebanse
109. Clay City
110. Coal Valley
111. Crab Orchard
112. Dunlap
113. Eldorado
114. Franklin Grove
115. Garden Prarie
116. Gillum
117. Goreville
118. Greenville
119. Harmony
120. Highland
121. Johnston City
122. Kewanee
123. Lanark
124. Marissa
125. Marshall Jct.
126. McLean
127. Mt. Carroll
128. Mulberry Grove
129. New Athens
130. Odell
131. Oregon
132. Petersburg
133. Pleasant Plains
134. Preemption
135. Roberts
136. Roseville
137. Savanna
138. South Pekin
139. Steward
140. Sycamore
141. Toulon
142. Tuscola
143. Williamsville

Illinois Communities which are newly served: Oak Brook and Prarie City.

In addition to these, 22 other communities face the total loss of service in the near future. A new Illinois statute requires companies to give the state prior notice of their abandonment plans. The following Illinois communities have been listed by the bus companies serving them as being under consideration for abandonment: Lawrenceville; Posey; Beckemeyer; Mt. Sterling; Breese; Trenton; Lebanon; Mt.

Olive; Olney; Washington; Astoria; Clayton; Plano; Princeton; O'Fallon; Flora; Carlyle; Rushville; Camp Point; Sandwich; Genesseo; and Fairview Heights.

It is more difficult for a State agency to keep track of new entry because normally carriers will receive operating authority from the Interstate Commerce Commission rather than the State. In some cases they will simply secure operating authority without actually commencing service and in other cases they will begin operations but not notify the state. However, as best as we can determine there have been 13 new routes started in Illinois since the Bus Act went into effect. Over half of these are airport limousine services which connect airports with surrounding communities. None of the new routes serve points which did not previously already have service. As a general rule the freer entry provisions of the Bus Act have not addressed the problem of rural service abandonment.

A third area of concern to some States is rates. In some cases bus companies have increased rates dramatically, confident that a denial by the State Commission will be overruled by the Interstate Commerce Commission upon appeal. The ICC's current policy of overturning any intrastate rate which is lower than a comparable interstate rate simply eliminates any possibility of meaningful State rate regulation. We do not believe that Congress intended the ICC to so clearly abuse its jurisdiction under this provision of the Bus Act. However, at least in Illinois we have embarked on a different course with regards to rates and the results thus far have been encouraging. Pursuant to new state law, bus companies may adjust rates anywhere within a +25 percent/−25 percent range in any one year. Although the statute is still of recent vintage, our experience is that market competition—especially with the private automobile—has held rates to moderate levels. In most cases rate adjustments under the Illinois Zone of Rate Flexibility have been in the range of approximately 10 percent, not the 25 percent which the law allows. And in some cases no increases have been taken. We intend to closely monitor the rate levels in Illinois during the next year to determine if a stable rate pattern has emerged and if any further modifications in State law are in order.

Everything I have discussed to this point has been retrospective. The Bus Act is a reality and, although many of our colleague states vigorously disagreed with the Bus Act, there is little to be gained by not adjusting to it. Our challenge is to look forward and make the best of what we have to work with. As state regulators we are still charged with the responsibilities conferred upon us by our respective state laws to protect the public interest as it pertains to transportation service. We are faced with a rapidly shrinking rural transportation network; an Interstate Commerce Commission which in recent years has been almost totally committed to deregulation irrespective of the consequences; and limited resources to address the problems we are discussing today. Under the circumstances there is not a great deal to inspire confidence about the prospects for revival of the rural bus transportation system.

However, to begin with we must reject the Motor Carrier Ratemaking Study Commission's implication that the rural abandonment problem is unimportant. There is no question that the system has been shrinking over the decades: No one to my knowledge has ever disputed that. The regulated bus network which existed prior to the passage of the Bus Act was a mature network and like many mature systems it was gradually contracting. The concern which the states have had since 1982 has been over the rapid acceleration of that contraction process. All the rationalizing in the world will not avoid the basic fact that at the current rate of service discontinuation enormous areas of rural America will be without any public transportation in a very short time. The states are very concerned about this, even if some federal agencies are not.

But it is not enough to simply state a problem without suggesting a solution to it. It does not appear that Congress will choose to return to a highly regulated bus transportation system so we must look to other solutions to the abandonment problem. We believe the solution does not lie in simple reliance on the free market. That approach will only expand the abandonment problem, not solve it.

In our estimation the solution to the abandonment problem must be the product of federal, state, and local cooperative efforts. The federal role should be in Congress passing S. 1916 and H.R. 4067 which were introduced earlier this year. These identical bills, referred to as the "Prior Notice Amendment", would require companies to give advanced notification to the communities they serve about their plans for service discontinuation before any Abandonment Petitions are filed. This will give the state and local communities the time and information necessary to explore various alternatives before the case becomes an actual abandonment situation. H.R. 4067 and S. 1916 are patterned after similar provisions in the Railroad Revitalization and Regulatory Reform Act which pertain to branchline abandonments.

The new state role must be to work with local communities to promote service. Ultimately only reasonable ridership levels will ensure continuation of bus service. The states can help promote service by performing marketing and other statistical studies, aiding in low cost advertising, using their contacts to help recruit new, low cost carriers to provide replacement service, and aiding in the creation of entirely new carriers by both marketing assistance and aid in satisfying legal requirements of all levels of government.

For their part, local communities must take the initiative to encourage their residents to use the bus; city officials must attempt to make use of the bus for various municipal purposes; and they must actively find ways to help a bus operator on a marginal route stay in operation, perhaps by direct subsidies or perhaps by in-kind subsidies. Since the Bus Act became effective, the traditional role of city officials has drastically changed. No longer can rural community leaders remain disinterested in their bus service until abandonment becomes inevitable and then simply protest the loss of service after the abandonment petition has been filed. Much more is asked of them.

And the bus companies themselves must be willing to work with the states and local officials to work out solutions to these problems. I feel certain that the bus industry stands ready to provide this cooperation, just as I am sure the states and local communities are willing to work together to solve these difficult problems.

In short, the Bus Act has greatly altered the roles which all of the traditional actors in abandonments must play. There are no simple solutions and on many routes there will be no solution at all except for service discontinuation. However, Congress has clearly set a new direction for intercity bus regulation and the states must adjust to these new conditions. Nevertheless, Congress can greatly aid the states and local governments in this period of adjustment by passing S. 1916 and H.R. 4067 into law. We urge your support for this legislation.

Thank you for this opportunity to present these views and I will be happy to answer any questions that the Committee may have.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR DANFORTH AND THE ANSWERS THERETO

Question. You express concern in your testimony about the loss of bus service in small communities as a result of enactment of the Bus Regulatory Reform Act of 1982. Do you believe we have seen the last of the full-scale abandonments by carriers, or do you think we have thus far only seen the first wave of such carrier activity?

Answer. Several thousand communities nationwide have lost service in the two years since passage of the Bus Act. This is unfortunate, especially in light of the fact that very few new carriers have appeared so far to provide replacement service in these rural areas.

We would not expect abandonment activity to continue at the same pace as during the first years of the Bus Act. Carriers are in the process of consolidating their positions and evaluating where they stand in light of their new environment. Abandonment activity will continue, but at a slower pace than somewhat frenetic period of 1982-84.

It would be purely speculative to try to guess at what point the bus network will stabilize. I will say, however, that I am not optimistic about the future of most rural service routes. Most of them have never been more than of marginal profitability. They have existed under a regulation system because of the concept of cross-subsidy which allowed profitable routes to support unprofitable service, and because cariers found these rural routes useful in providing feeder traffic for their long distance runs. However, feeder traffic, in turn, was only a part of the traffic mix on the marginal routes. Long distance passengers on rural routes were supplemented by short distance traffic which provided the additional revenue to justify the service. Without revenues derived from "protected" profitable routes to cross subsidize rural service, and with total dedegulation of schedules, carriers have cut back on the level of service which they provide on rural routes. Thus the quality of service, such as one bus per day, normally does not attract enough of either the important short distance passenger or the long distance connecting passenger to maintain any semblance of route profitability. Consequently the familiar "downward spiral" effect would seem to doom most rural service over the long term.

I would not suggest that this result will occur in a sudden surge or "wave". Rather we believe the shakeout will take the form of a lessened, but continuous flow of abandonment activity over the next few years.

I would also observe that his dynamic is not the result of malicious intent on the part of bus companies. It is a normal result of carriers acting rationally during a period when previously regulatory structures are being dismantled.

The policy issue which remains is simply: Where do we go from here? We remain convinced that the only real solution to the rural abandonment problem, to the extent that there is a solution, lies in local communities accepting responsibility for preserving their service through promotional efforts done in cooperation with bus companies; that the states must provide technical assistance to the parties to ensure service preservation and use residual regulatory tools for that purpose; and that the Interstate Commerce Commission must adopt policies suppportive of the states and employ personnel who are willing to work in genuine cooperation with the states to solve these problems. And we remain convinced that permanent solutions to these problems will not come about until Congress passes legislation similar to S. 1916 and H.R. 4067, the "Prior Notice Amendment".

This bill is intended to make deregulation work for the public, as well as for the bus industry. Unless the States receive legislative relief soon, Congress will eventually be asked to provide a huge operating subsidy program to restore bus service on routes which were casualties of the Bus Act. This will be especially unfortunate for the taxpayer because such a program will only provide the same service which the public previously enjoyed without cost insofar as the users of the regulated bus system paid for that system.

NARUC's member state agencies remain willing and able to work with Congress to find additional solutions to the bus abandonment problem.

Question. In your testimony you state that the ICC's current policy of overturning any intrastate rate whcih is lower than a comparable interstate rate eliminates any possibility of meaningful State rate regulation. In what types of cases would you envision that interstate rates should be below intrastate rates for comparable traffic?

Answer. As a practical matter the Interstate Commerce Commission has deregulated rates. Therefore a bus company could file a substantial rate increase at the ICC, where it is given rubber-stamp approval, and then ask the State for the same increase. The State's traditional techniques for evaluating rate reasonableness, such as operating ratios and return on investment analysis, then become meaningless since whatever rate the State determines to be reasonable will be overturned by the ICC if it is below the deregulated interstate rate. This is true even when the state uses a bus company's own cost data to prove that a lower intrastate rate is reasonable. The ICC's contention seems to be that states never allocate enough expenses to intrastate operations to arive at appropriate rates, yet it refuses to develop a proper cost allocation methodology for the states to use, and it has no interest in working with the states to jointly develop one. This is in all honesty a regulatory charade.

The key issue is whether or not interstate rates should be set at "reasonable" levels based on standard regulatory criteria. If the ICC does establish reasonable rates based on serious regulatory oversight, then in most cases intrastate rates should be set at comparable levels. However, if the ICC simply allows all rate increases to go into effect, then the state may indeed wnat to set intrastate bus rates at reasonable levels, to protect captive riders from excessive rates. In short, the issue pivots on Whether or not interstate rates are reasonable, not whether they are higher or lower than intrastate rates. If interstate rates BY DEFINITION are reasonable, irrespective of the rate level, then state rate regulation is a fairly pointless exercise.

As a practical matter, bus companies are increasingly using mileage scales to set their rates. In converting from a point to point to a mileage scale, there are rather substantial rate increases for all types of travel, but especially for short distance trips (due to the fact that shorter-distance intrastate rates have normally been lower than comparable interstate rates). After putting mileage scale rates into effect, the companies then amend these tariff schedules by using their freedom to reduce rates without regulatory oversight. Thus they establish higher rates generally, but reduce them at points where competition exists. Consequently there exists a rather high incidence of what traditionally was known as "rate discrimination", whereby rural passengers must pay higher rates then their urban counterparts. This problem was recognized during the debate on the Bus Act, but at that time it was presumed that it was the intrastate passenger who was the beneficiary, at the expense of the interstate passenger. Now we may be seeing the same type of problem in reverse.

We believe two issues must be resolved. First, is "rate reasonableness" an operative concept any more? Or is it the view of Congress simply that market forces will restrain rates in an overall sense, and that the benefits of overall rate restraint will exceed the costs imposed on society of localized rate discrimination? The present relationship of state/federal rate regulation certainly implies the latter, and the Illinois 25% Zone of Rate Flexibility was established in light of that reality. On the other hand, if Congress believes "rate reasonableness" is still an important concept, then the Interstate Commerce Commission will have to begin a more serious effort to review rate increase proposals *OR* state decisions will have to be given much more deference on intrastate matters than is presently the case.

A second issue assumes that the "rate reasonableness" standards no longer have any importance. In that case. the issue of the relative levels of interstate and intrastate rates becomes moot. States should then turn their regulatory attention to service preservation. We believe the most effective state policy is the one that Illinois have adopted, which is a wide Zone of Rate Freedom to prevent only the most obvious abuses, with nearly total regulatory concentration being applied to service preservation through the "Prior Notice" concepts that we have in state law and which we strongly advocate be added to federal law.

Senator DANFORTH. Next we will hear from a panel: Dr. T. Peter Ruane, president, National Moving and Storage Association; Mr. Robert R.C. Miller, vice chairman of the board, Atlas Van Lines, representing the Household Goods Carriers Bureau; and Mr. Richard L. Russell, chairman of the board of the American Movers Conference.

[Pause.]

Senator DANFORTH. Mr. Ruane, would you like to go first?

STATEMENTS OF T. PETER RUANE, PRESIDENT, NATIONAL MOVING AND STORAGE ASSOCIATION, ACCOMPANIED BY BOBBY GANDY, CHAIRMAN OF THE BOARD; ROBERT R.C. MILLER, REPRESENTING THE HOUSEHOLD GOODS CARRIERS BUREAU; AND RICHARD L. RUSSELL, CHAIRMAN OF THE BOARD, AMERICAN MOVERS CONFERENCE, ACCOMPANIED BY CHARLES C. IRIONS, PRESIDENT

Mr. RUANE. Yes, Mr. Chairman.

First, we would like to thank you again for the opportunity to appear before this committee to present some ideas and feedback regarding the Household Goods Transportation Act.

I would just like to introduce our chairman of the board, Mr. Bobby Gandy, who will summarize some of the points in our testimony which has been provided to the committee.

Mr. Gandy.

Mr. GANDY. Thank you, Peter.

As mentioned in our statement, the National Moving and Storage Association is the oldest national trade association in the household goods industry, and we hold ourselves to represent the small business sector of the industry.

We have recently had some recent board meetings and government symposia that gave us information for this report, and even though, as someone testified earlier, the household goods industry had an upturn in revenues, in current volume, there is still a lingering effect of recession on our small members and on our operators.

Another option that has caused some problems in our industry is the discounting program that, as we have testified before, may discriminate against COD customers. The military problems that are

in our statement have been addressed by the military already, so I will not linger on those.

We feel strongly that the preservation of Federal oversight is needed in our industry, because the various State regulations and conflicts in State regulations of Federal oversight where we operate and provide service in 50 States are necessary and helpful to the industry.

The self-haul industry, which has been mentioned in our testimony before, we believe needs some looking at again, because of the very fact that they are able to license vehicles in one State, a low State, and operate, furnish drivers to the entire service, as we do, without having to pay the regulatory fees.

Probably our strongest statement is a continuing antitrust immunity for carrier agent discussions. We believe strongly that that is a necessity to maintain a strong, viable system, that the agent be allowed to talk to his principal van line about rates.

In that same statement, the continuing antitrust immunity for pooling and aligning carriers who are pooling shipments to provide service to continue under the protection of the antitrust immunity.

And that finishes our statement, Mr. Chairman.

[The statement follows:]

STATEMENT OF THE NATIONAL MOVING AND STORAGE ASSOCIATION

BACKGROUND

The National Moving and Storage Association is a non-profit trade association organized and existing under the General Not-for-Profit Corporation Act of the State of Virginia. Its offices are located at 124 South Royal Street, Alexandria, Virginia 22314.

NMSA has been in existence since 1920. It is the oldest national trade association in the household goods moving and storage industry. The Association's membership is comprised of over 1,200 local and international movers, agents and warehousemen located throughout the United States and 63 other countries. The majority of the Association's U.S. membership are agents of the large national van lines. However, many NMSA members have individual ICC operating authority in their own right which provides them the freedom to offer transportation services to shippers without having to function exclusively under their van line's operating authority.

In preparing its comments this year, NMSA has had the benefit of recent Board meetings and a symposium for members on government affairs attended by industry representatives from 15 states. Our comments also reflect recommendations by the NMSA "Task Force on the Future," which was formed in the fall of 1983 to review the impact of deregulation on our industry. The January 1984 Report, based on suggestions by a cross section of industry leaders, analyzed and recommended legislative and educational programs to enable the moving and storage industry to adapt to the changes of the 1980's.

SMALL BUSINESS SEGMENT STILL IMPACTED BY LINGERING ECONOMIC DIFFICULTIES

The present business climate of the household goods industry continues to improve. For most major carriers, an improving economy has resulted in the best year since 1979, in sharp contrast to the 1981-82 period when the industry suffered serious setbacks through decreased volume and bankruptcies. Viewed simply from the standpoint of the larger national carriers, current volume is up and operating revenues are increasing.

However, as we indicated in our testimony last year, this improvement is unevenly spread throughout the industry. The small business component of the industry, the agent and the owner-operator, bear the brunt of the lingering effects of the economic recession and the discounting practices prevalent in the industry.

For the most part, NMSA's membership constitutes the small business sectors of the industry. Approximately 80 percent of NMSA's members earn $1,500,000 or less per annum. Nearly half of the membership's (about 43%) annual revenues approxi-

mate $500,000. It should be noted that many moving companies are family-owned businesses, with less than 20 permanent employees.

Since the enactment of deregulatory legislation in 1980, many carriers offer an increasing variety of price and service options. One prevalent option is the use of discounts to large corporate shippers who provide a set volume of business. This practice may discriminate against COD customers in favor of the larger corporate shipper. It also impacts adversely on many small movers who do not have the capacity to match these discounts.

SEVERAL MILITARY PROPOSALS REMAIN PROBLEMATIC

NMSA is concerned about, and opposed to, a number of proposed military programs that go against the grain of the intent of the Household Goods Transportation Act and other approved Federal policies. These programs are generally being advanced in the name of saving money and improving services. In actuality, they are not cost-effective and they impact adversely on the moving and storage industry.

Several Military Exchange Systems are actively considering establishing mini-storage facilities on military bases, in competition with commercial facilities. These proposals are unjust because they would disrupt existing markets and because the military, unlike commercial businesses, is not subject to regulation (such as building codes or architectural review) or taxes. The proposal is also unnecessary, given that the military's storage needs are being met by private industry.

The NMSA Board of Directors in its recent meeting on September 18–19 unanimously approved a resolution to oppose this program. NMSA has joined hands with the Self Service Storage Association (SSSA) of Eureka Springs, Arkansas in a joint effort to point out the inequities of such a program. Both NMSA and SSSA have taken this concern to the appropriate members of the Senate and House Armed Services Committees. It is cited here to day only to illustrate the mindset that prevails in certain Defense agencies—one of insensitivity and occasional disregard to the adverse impact of proposals on small business in the moving and storage industry.

A more fitting example can be found in a current proposal recommending using existing government warehouses for storage-in-transit, rather than using commercial warehouses. This proposal ignores the expenses that would result from the administrative costs of locating, inspecting and leasing government warehouses. The settlement of claims would also be unclear.

An additional problem with both the storage-in-transit and mini-storage proposals is that they may violate the government's policy to contract out to private businesses wherever possible.

Another program under consideration by the military is the adoption of an intrastate rate acquisition program. This program was also commented on by NMSA in previous testimony. An August 1984 draft GAO Report recommends the adoption of this program. If the program is implemented, moving companies would have to file tariff rates for intrastate shipments, much the same as for interstate shipments.

NMSA is opposed to this program. By the military's own admission, intrastate payments to household goods carriers amounts to only 3 percent of the military's payments to the industry. The adoption of this program would create an unnecessary administrative burden. For all 50 states, separate paperwork and filings would have to be administered. The number of carriers having intrastate authority would be enormous and further contribute to the paperwork burden. The National Council of Moving Associations (NCMA—an NMSA affiliate) which represents some 20 state associations with over 5,000 member firms has also gone on record opposing the intrastate program.

PRESERVATION OF FEDERAL OVERSIGHT NEEDED

Many observers are speculating that futher deregulation of the industry may occur. If federal legislation is further withdrawn, the industry is strongly concerned about the possibility of federal legislation simply being replaced by a crazy quilt pattern of state rules and laws.

A survey of our membership conducted in 1982 showed that movers believed that while the ICC paperwork burden was generally reduced, the states were instituting new requirements. Given that movers travel into and from all 50 states throughout the year, a lack of uniformity in state regulation is particularly onerous.

The tension created by ongoing state regulation was reflected in the past year's industry news stories. For example, a confusing situation arose recently in Los Angeles, where the city approved an ordinance imposing a payroll tax on all companies doing business in the city limits. Presently, there is some question whether the ordi-

nance may be applied to inter-city carriers that operate under the jurisdiction of the California Public Utilities Commission.

Discussion from NMSA Board meetings and industry-wide symposium in September reveal this problem is growing at a rapid pace.

To avoid these problems, a clear federal intent to preserve ICC oversight of the household goods industry is needed. Such an intent is consistent with the unique nature of the household goods component of the motor carrier industry, a uniqueness which has been recognized by the Congress when it enacted the Household Goods Transportation Act.

SCRUTINY OF SELF-HAUL INDUSTRY STILL REQUIRED

In testimony before this Committee two years ago, NMSA requested that the Interstate Commerce Commission be directed to investigate the programs of the self-haul industry (i.e. consumer rents trucks to move themselves). For some time, NMSA has been concerned that the self-haul industry is offering broader services to the consumer than self-haul without being subject to the enforcement, oversight and filing requirements of the typical mover, thereby placing the latter at a disadvantage. NMSA also noted that many self-haul companies escape state registration fees by registering vehicles in "safe harbor" states that do not require fees. These same vehicles in fact operate in states that do require fees. NMSA wishes to point out that, two years later, the ICC has yet to take any real action in regards to this problem. We are informed that a minor ICC review took place after our request in 1982 but the problem continues unabated and more serious ICC enforcement actions appear warranted.

AGENT/VANLINE ANTITRUST IMMUNITY REQUIRED

Among the NMSA "Task Force on the Future" recommendations is that antitrust immunity for carrier/agent discussions and for pooling agreements needs to be preserved (see attached portion of Task Force report). In the report accompanying the Household Goods Transportation Act, Congress recognizes that the agent/vanline relationship could be jeopardized in the absence of antitrust immunity. Preservation of antitrust immunity for pooling agreements is also paramount to maintain the viability of the household goods industry.

CONCLUSION

The Household Goods Transportation Act is a fair and well-balanced piece of legislation. The moving and storage industry is demonstrating its ability to adapt to the changing climate of the 1980's. This adaptability is in part demonstrated by the improving financial performance of the industry and the many new services now being offered to the consumer.

In the context of an overall improving picture, NMSA urges this Committee to take note of a few problem areas. The small business segment of the industry continues to bear the brunt of lingering economic difficulties. If federal regulation is reduced, a clear federal mandate to protect the industry as a whole from unnecessary state regulation is required. Preservation of antitrust immunity for agent-carrier discussions and pooling agreements is mandatory to preserve a healthy industry. The proposed storage-in-transit, self-storage and intrastate rate acquisition programs of the military are not cost-effective and are harmful to the household goods industry. Finally, NMSA urges this Committee to require the ICC to scrutinize the broad and potentially volative activities of the self-haul industry.

CHAPTER IV.—TASK FORCE RECOMMENDATIONS

A NEED TO PRESERVE ANTITRUST IMMUNITY FOR CARRIER/AGENT DISCUSSIONS

Among the Task Force considerations, concern regarding preserving antitrust immunity for discussions between agents and van lines emerged as an issue of central importance. Section 10934 of Title 49 USC as amended by the Household Goods Transportation Act (HHGTA) of 1980 contains a provision which immunizes from the antitrust laws certain discussions relating to agreements between carriers and their agents. Referring to 49 USC Section 10934, paragraph (d):

The antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12), do not apply to discussions or agreements between a motor common carrier providing transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and its agents (whether or not an agent is also carrier) . . . .

These specifically relate to rates, charges and allowances for transportation provided under the authority of the carriers. In addition, discussions and agreements related to the ownership of a carrier by an agent or carrier agent, membership on the carrier's board of directors by an agent or carrier agent are immune. Congress recognized that the continuation of such relationships between carriers and agents was integral to the financial and organizational health of the household goods industry. Congress, in their formal report accompanying the HHGTA, noted that such relationships could be jeopardized in the absence of antitrust immunity. While these exemptions are narrow ones, they nonetheless are crucial to insuring that the industry maintains a high level of service to the public.

The unique working relationship of the van line and agent was outlined in Chapter II of this report. The mutually beneficial arrangement of coordinating shipments and services is unique in the trucking industry and has worked effectively for over 50 years. Antitrust immunity has played a large role in allowing the agency system to function successfully for both the consumer and industry.

Preservation of this antitrust immunity accrues multiple benefits to both the industry and consumer alike. The consumer benefits in that he has a variety of choices in terms of selecting movers who represent a broad range of carriers and different capabilities and services at various prices. The retention of such immunity, in fact, enhances competition since agents have numerous choices of van lines with whom to conduct their services. Elimination of such immunity could lead to further concentration in the household goods industry in which several large companies would become even larger. Agents would effectively become solely reliant on the van line companies for interstate business, thus diluting the benefit of being an independent family-owned business, The absence of immunity would have a negative impact on the small business segment of the moving and storage industry. If such immunity were eliminated, carriers could no longer discuss rates with their independent agents, several of whom may be located in the same city, and thus elimimate the economics of sharing traffic and sharing the overhead cost of advertising and general administration. The average agent would not be able to duplicate the various support functions a van line provides and consequently must be able to discuss both rate and service options with his respective van line.

The Task Forc concluded that the preservation of this antitrust immunity and pooling capability discussed on the following pages is paramount.

PRESERVATION OF ANTITRUST IMMUNITY FOR POOLING AGREEMENTS

The Motor Carrier Act of 1980 (MCA) included a new section pertaining to pooling agreements. This established a presumption in favor of a pooling agreement between a principal carrier and its carrier agents where the practices were the same or similar to those carried out prior to the new legislation in 1980. The MCA allowed the continuation of pooling agreements when they were in the public interest and did not unduly restrain competition. This legislation also provided a procedure for the prompt approval of new pooling applications. The Task Force concluded that preservation of antitrust immunity for poolng agreements is also paramount to maintain the viability of the household goods industry. Such agreements offer consumers additional service options and allow small movers to benefit from the economies associated with sharing overhead expenses and coordinating the shipment of goods throughout the nation. Such pooling agreements also recognize the benefits of competition between individual carrier agents who have their own operating authorities. Promoting competition in the industry was a major intention of both the Motor Carrier Act and the Household Goods Transportation Act of 1980.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR DANFORTH AND THE ANSWERS THERETO

Question. In your testimony you note the improving financial performance of the household goods moving industry. To what do you attribute this improved performance?

Answer. The improved financial performance of the moving industry is attributable to several factors. First the improvement in the general economic climate has increased shipments and total overall revenues have grown due to this and rate increases. Secondly, the competitive factors enhanced by recent motor carrier legislation (MCA & HHGTA) and the 81-82 recession forced most carriers to streamline operations. They are currently operating more efficiently than before and have initiated effective cost control programs.

The positive financial indicators are clearly reflective of larger national carriers. The small business component (agent/driver) is bearing the brunt of most of the rampant discounting practices. It remains to be seen if the overall industry is operating at revenue levels sufficient to produce real profitability and growth.

Question. You express concern in your testimony about proposed military programs relating to mini-storage facilities and use of military warehouses for storage-in-transit of household goods. To what extent would DOD's adoption of these programs adversely effect the household goods moving industry? How significant a potential problem does this represent?

Answer. We have already indicated our objections to the very concept of the military competing with commercial business when the needs of the military are being well met by private industry.

As to significance, in fiscal 1983 the industry provided storage-in-transit services to the military worth $91,000,000.

As to adverse affect, we must again refer to the structure of our van line/agent industry, noting that for a carrier to provide a full service, a network of agents is necessary. In todays market place there are many agents who are not anxious to engage in military traffic per se. However, with the opportunity to receive income for providing SIT services those agents will agree to provide full origin and destination services for their carrier's military traffic. We are convinced that if the military does not retain SIT in the private sector, agents will withdraw from the program in sufficent numbers to make most carriers incapable to providing a system-wide service to the military.

In regards to the self-storage issue, NMSA is working with the Self Service Storage Association (SSSA-Eureka Springs, Arkansas) to develop further information on the full extent of this problem. In addition, it would appear from the Military Exchange System guidelines that predatory pricing may also result from these Federal government efforts. Finally, on-base self-storage facilities are contrary to established Federal procurement policy and regulations, most notably OMB Circular A-76 (Revised) "Performance of Commercial Activities". A quote from the OMB implementing memorandum of August 4, 1983 says it all: "In the process of governing, the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs."

Question. You express concern in your testimony about State regulations affecting interstate household goods carriers. How much of a problem do these regulation present?

Answer. State regulations constitute a significant burden to the household goods moving industry.

The report to Congress by the Department of Transportation and the Interstate Commission as directed by Section 19 of the Motor Carrier Act of 1980 verified completely the declaration of Congress introducing Sec. 19.

"Congress hereby declares and finds that the individual State regulations and requirements imposed on interstate motor carriers regarding licensing, registration and filings are in many instances confusing, lacking in uniformity, unnecessarily duplicative, and burdensome——."

As household goods carriage is by its very nature an unscheduled, irregular route (destination) operation responsive to the diverse requirements of individual shippers; movers are more greatly affected by lack of state regulatory uniformity than any other segment of the trucking industry.

NMSA is monitoring and participating in ongoing efforts by NARUC and the National Governor's Association to address the uniformity issue. What we emphasized in our testimony is that as Federal regulation of interstate moving is reduced, there is a propensity for states (and other subdivisions to substitute their own form of regulation).

A recent survey by the American Trucking Association showed that 39 states have some form of regulation of entry, rates and service area, while two states have totally deregulated since 1980.

Other responses received from 48 state trucking associations, include: 12 states have eased regulation in some manner since 1980; 4 states have strengthened collective rate-making or entry provision; 9 states are studying regulation or preparing legislation to reduce regulation; and 5 states have no intrastate regulation (Arizona, Delaware, Florida, Maine and Vermont), and Colorado and Idaho have deregulated household goods.

Given the varying philosophies towards regulation prevalent amongst the states, we are convinced that as regulations are developed locally to fill a real or imagined void, their disparity and conflict will lead to regulatory costs and a paperwork nightmare with which many interest movers (especially small carriers) will be unable to cope with.

Senator DANFORTH. Thank you, sir.

Mr. Miller.

Mr. MILLER. Thank you, Senator.

My name is Robert R. C. Miller. I am vice chairman of the board of Atlas Van Lines of Evansville, IN. I am also chairman of the board of the Household Goods Carriers Bureau.

My testimony today is submitted on behalf of the bureau and its approximately 1,700 members in response to the subcommittee's kind invitation. The bureau has presented testimony at each of the oversight hearings held since enactment of the Household Goods Transportation Act of 1980.

In those presentations, we have complained about the ICC's apparent unwillingness to administer the ratemaking provisions of the Interstate Commerce Act in a manner that we believe is consistent with the congressional intent underlying the 1980 legislation.

Unfortunately, the situation has not changed. The Commission's laissez faire approach to administration of the Interstate Commerce Act continues to reflect an apparent disregard for the will of Congress in this area.

The Commission, as it has been constituted until recently, remains apparently enmeshed in its own program of complete deregulation of all aspects of the operations conducted by household goods carriers.

Rather than acting in a responsive and timely administrative manner, the Commission has elected to allow certain carrier ratemaking practices to progress to the state that consumers began registering complaints with the ICC.

Obviously, my industry does not benefit from carrier practices that evoke complaints from our customers. In our view, a deliberate course of agency inaction is predestined to produce negative public responses to the way that the industry conducts its business and prices its service.

It was conduct of this sort that first introduced us to the pre-1980 extremes of Federal regulation. We had perhaps erroneously hoped that the balancing of consumer and carrier interests that were so carefully struck in the 1980 legislation would be fairly administered by a Commission that understood the need for continued responsible agency action.

Turning to the economic state of our industry, it appears that we have, together with other segments of the economy, rebounded from the 1980 to 1983 recession. We are hopeful that our 1984 experience to date is not misleading, and that the economy is truly on an upward course. We are, however, cautious.

Movers traditionally experience their worst operating results during the months of October through April. If the results of that 1984 to 1985 period do not dramatically alter our 1980 to date results, my industry could be rebounding from the recession.

It is, of course, too soon to predict the outcome of that situation, but it is disturbing to note that the new housing starts dropped 12.8 percent last month. This is the second consecutive month that this has happened.

A fair appraisal of the effect of the household goods legislation on the moving industry suggests that the industry has emerged from the reregulation process without experiencing significant changes in the number of carriers who are engaged in the business or in the way that we conduct our business.

The regulatory reforms effected by the 1980 legislation and the number of service price options available to the public have had a generally favorable impact. The service provided by movers has been performed without the large number of complaints that were routinely amassed by the ICC in the years prior to 1980.

The conclusion to be drawn from all of this is that the public has benefitted and is continuing to benefit from the weighing and balancing of public and carrier interests that were struck by Congress in the 1980 legislation.

My industry should continue to function well in this changed regulatory environment, provided no further drastic statutory changes are thrust upon us. Having passed through a very serious recessionary period, with all of its attendant economic dislocations, the industry should not be subjected to additional regulatory upheaval.

It is essential that the favorable effects of the 1980 legislation be allowed to settle upon the industry without the unsettling prospect of further economic disruptions.

Thank you, sir.

[The statement follows:]

STATEMENT OF ROBERT R.C. MILLER ON BEHALF OF HOUSEHOLD GOODS CARRIERS' BUREAU, INC.

My name is Robert R.C. Miller. I am Vice Chairman of the Board of Atlas Van Lines, Inc. and its domestic subsidiaries with headquarters at Evansville, Indiana. This statement is submitted on behalf of the Household Goods Carriers' Bureau, Inc. (Bureau) and its approximately 1,700 member carriers in response to the Subcommittee's invitation to present testimony on implementation of the Household Goods Transportation Act of 1980.

The Bureau is the principal ratemaking, tariff publishing and data gathering organization of the household goods carrier industry. It operates pursuant to a collective ratemaking agreement that has been filed with the Interstate Commerce Commission (ICC or Commission) under Section 10706 of the Interstate Commerce Act, 49 U.S.C. § 10706. The Bureau's rates and charges apply throughout the United States and between points in the United States on the one hand, and, points in Canada and Mexico, on the other.

I have been active in the transportation industry for 32 years, with the last 20 being devoted to the household goods moving industry. I am the Chairman of the Board of the Bureau. I am also a member of the Executive Committee of American Movers Conference and Conference Vice President of American Trucking Associations, Inc.

As the representative of the moving industry's principal rate bureau my testimony today will address matters bearing upon carrier ratemaking as it has evolved under the 1980 legislation.

The Bureau has presented testimony at each of the oversight hearings held since enactment of the Household Goods Transportation Act of 1980 (HGTA). The major points raised on each of those occasions involved the Commission's apparent unwillingness to administer the ratemaking provisions of the Interstate Commerce Act in a manner that we believe is consistent with the Congressional intent underlying the 1980 legislation. Unfortunately, this situation has not changed. Except for one

recent example of regulatory direction in the area ob binding estimate pricing procedures provided by the ICC's Office of Compliance and Consumer Affairs, the Commission's laissez faire approach to administration of the Interstate Commerce Act continues to reflect an apparent disdain for the will of Congress. Put succinctly, the Commission, as it has been constituted, remains enmeshed in its own program of complete deregulation of all aspects of the operations conducted by household goods carriers. The Bureau applauds the recent step taken by the Commission staff away from this administrative indifference and towards reasonable ratemaking standards by announcing guidelines for the offering by carriers of binding estimates of charges to shippers, in the manner intended under the Household Goods Transportation Act.

The 1980 legislation permits carriers to offer written binding estimates of charges for their transportation services. 49 U.S.C. §§ 10734(a)(1) and 11110(b)(1). Apparently in response to consumer questions and complaints concerning proper interpretation of this statutory authorization the Commission's staff issued an administrative ruling on June 12, 1984, which attempts to clarify and set guidelines for the offering of binding estimates.[1] This staff ruling acknowleges that it is ". . . informal and made in the absence of Commission decisions." Certainly this is the case. In fact, at each of the oversight hearings held on the HGTA the Bureau complained that the Commission has done absolutely nothing to establish guidelines for the offering of binding estimates. Four years after Congress enacted the 1980 Act the Commission's staff attempts to untangle a situation that could have and should have been clarified shortly after the law became effective. A reading of the HGTA legislative history clearly indicates that Congress was fully aware of the consumer's desire for price certainty and the need to act legislatively to accomplish that goal. For its part, rather than acting in a responsible administrative manner, the Commission elected to allow the situation to deteriorate to the point that complaints from consumers necessitated a directive in the form of an administrative ruling. Obviously, my industry does not benefit from carrier practices that evoke complaints from our customers. To the extent such a situation exists today, the Commission must bear a large measure of responsibility for its inaction and failure to set a reasonable course for carrier conduct.

Quite ironically the Commission's administrative ruling also sets down a number of longstanding admonitions which the Interstate Commerce Act and its case law have held to be basic tenets of carrier ratemaking:

(1) "The carrier is prohibited from collecting or receiving a greater or less or different compensation for transportation than the rates specified in the tariff and the motor carrier has the absolute obligation to collect charges in accordance with its published tariff."

(2) "If discounts from tariff rates are to be offered, they must be provided for clearly in the carrier's tariff. They must have definite terms of applicability and must be made available to the shippers on a nondiscriminatory basis."

(3) ". . . the Commission's regulations governing Freight Rate Tariffs (49 C.F.R. 1310), which requires clear and explicit tariff provisions usable by all members of the public, cannot be interpreted as allowing unpublished, secret discount practices on a shipment-by-shipment basis, at the carrier's sole option. Any common carrier tariff filed which contains provisions purportedly to be construed to allow such practices, are unlawful."

Throughout the period since enactment of the 1980 legislation the Bureau has posed a number of questions before the Commission in the form of requests for declaratory orders revolving around these basic principles. They attempted to determine whether certain ratemaking practices were discriminatory if they preferred certain classes of shippers. These requests for ratemaking guidance never received a direct Commission response. Instead, the Commission dismissed all questions concerning carrier ratemaking in a rather cavalier manner by announcing that household goods carriers' rates can never be predatory, unjust, unreasonable or discriminatory in their treatment of different classes of shippers.[2]

Although ratemaking standards are mandated by the Interstate Commerce Act, the Commission is obviously content to await a swell of consumer complaints against questionable carrier pricing practices before it responds. In our opinion this is not what was intended by the framers of the 1980 legislation. More importantly, a deliberate course of agency inaction is pre-ordained to evoke negative public re-

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[1] Administrative Ruling No. 132, "Discount Rates and Binding Household Goods Estimates," served June 12, 1984.

[2] Ex Parte No. MC-166, "Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980," decided September 13, 1983.

sponses to the way my industry conducts its business and prices its service. It was conduct of this sort that first introduced my industry to the pre-1980 extremes of federal regulation. We had hoped that the balancing of consumer and carrier intersts that was so carefully struck in the 1980 legislation would be fairly adminstered by a Commission that understood the need for responsible agency action. Unfortunately, and obviously this is not the case.

I will now attempt to provide some insight into the impact of the 1980 legislation on the moving industry.

The extremely relaxed entry standards resulting from the Commission's construction of the Motor Carrier Act of 1980 have had very little affect on the number of motor carriers who are engaged in the transportation of household goods. I am aware of ICC statistics indicating that roughly 25,000 new carriers have received authority from the Commission since enactment of the MCA on July 1, 1980. Also, roughly 69,000 new certificates have been issued to existing and new carriers since July 1, 1980.

The Commission does not compile statistics of this nature dealing exclusively with household goods carriers; however, the Bureau compiles statistics that provide what I believe is an accurate indication of the number of carriers that have entered the moving industry since July 1, 1980. Those statistics indicate that 336 new carriers have become members of the Bureau since July 1, 1980. Since Bureau membership on July 1, 1980, stood at 1,642 carriers this would seem to indicate that the number of carriers that participate in the interstate transportation of household goods increased roughly 20 percent since enactment of the 1980 legislation. However, this is not the case. While 336 new carriers have become members of the Bureau, a greater number, 441, withdrew their membership from the bureau.[3] The 441 carriers who left the Bureau did so for reasons other than discontinuance of their participation in the collective ratemaking process. Seventy-nine (79) carriers went out of business, 36 carriers sold or merged their operating authority with that of other carriers and 262 carriers were simply removed from the Bureau's tariffs because they were unable to pay nominal participation fees suggesting that they are also out of business. This analysis indicates that the basic operating structure of the moving industry has remained constant and has not been significantly changed by the 1980 legislation.

Other Bureau statistics reveal that 549 Bureau carriers expanded the scope of their interstate operating authority through Commission issuance of new certificates. This however has not resulted in any significant realignment of traffic between those carriers who are in the market prior to 1980 and those who expanded their authority after 1980. As far as the primary carriers of household goods are concerned, there has been no major shift in market share. In 1979, the 10 largest national van lines accounted for 75 percent of the total business transacted. In 1983, those same van lines accounted for 71 percent of the business. This experience unequivocally affirms the position expressed by the Bureau in Congressional hearings prior to enactment of the HGTA. Specifically, the Bureau argued that any number of new ICC certificates that would authorize the transportation of household goods would have absolutely no effect on the basic structure of the moving industry. The agency system is what makes this industry function and not ICC certificates. It is a fact well known to those of us who are engaged in this business that without a sophisticated agency system consisting of van lines, carrier/agents and owner-operators no one can successfully engage in the transportation of household goods in a broad geographic area. This situation arises from the additional fact that demand for household goods service is not dictated by readily predictable traffic patterns. From year to year the points from or to which household goods carrier service will be required do not remain constant.

In sum, it is correct to say that the relaxed ICC certification process that resulted from the 1980 legislation has had little effect on the number of carriers who are engaged in the interstate transportation of household goods. While competition within the industry remains intense, it always has been and there are no new competitors who are having a significant impact on the intensity of that competition.

In the area of carrier ratemaking, significant changes have occurred since 1980. Today carriers offer a full range of pricing and service options to consumers to attract business. The total amount of available business however is not affected by these strategies. Unlike the demand for freight transportation service, the demand for household goods service is not influenced by the price that is to be paid for that service. Freight carriers can induce manufacturers and shippers to expand their

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[3] The Movers' & Warehousemen's Association of America, the only other major household goods carrier bureau, reports 1980 membership of 381 carriers and current 1984 membership of 368 carriers.

markets by offering reduced transportation costs. Household goods carriers, on the other hand, cannot induce families to relocate by offering reduced charges for their services. Families move for personal reasons and not because they desire to take advantage of a moving company's reduced transportation charges.

The amount of business the moving industry will conduct in anyone year is directly tied to the state of the economy and certain very significant economic circumstances such as the nur. ber of housing starts, mortgage interest rates and general business expansion that results in the creation of new plants or facilities and the relocation of corporate employees. Between the years 1979 and 1983 the numbers of shipments of household goods personal effects experienced a see-saw reaction as a result of the general economic climate. The numbers of personal effects shipments transported in the years 1980, 81 and 82 went down an average of 9 percent each year when compared to the 1979 results. The total number of shipments transported in 1983 was still 46,000 shipments below the number of shipments transported in 1979.[4] Data is not yet available for 1984, but it appears that the industry has, together with other segments of the economy, rebounded from the 1980–83 recession. We are hopeful that our 1984 experience to date is not misleading and that the economy is truly on an upward course. We are, however, cautious. Movers traditionally experience their worst operating results during the months of October through April. If the results of that 1984–85 period do not dramatically alter our 1984 to date results, the industry could be rebounding from the recession. It is, of course, too soon to predict the outcome of that situation but it is disturbing to note that new housing starts dropped 12.8 percent last month. This the second consecutive month this has happened.

A fair appraisal of the effect of the HGTA of 1980 on the moving industry as we view this situation in 1984 suggests that the industry has emerged from the re-regulation process without experiencing significant changes in the number of carriers who are engaged in this business or in they way they conduct their business. The regulatory reforms effected by the 1980 legislation and the number of price/service options available to the public have had a generally favorable impact. The service provided by movers has been performed without the large numbers of complaints that were routinely amassed by the ICC in the years prior to 1980. The conclusion to be drawn from all of this is that the public has benefitted and is continuing to benefit from the weighing and balancing of public and carrier interests that was struck by Congress in the 1980 legislation. My industry should continue to function well in this changed regulatory environment provided no further drastic statutory changes are thrust upon us. Having passed through a very serious recessionary period with all of its attendant economic dislocations, the industry should not be subjected to additional regulatory upheaval. It is essential that the favorable effects of the 1980 legislation be allowed to settle upon the industry without the unsettling prospect of further economic disruptions.

This brings me to my final point. Household goods carriers remain firmly committed to the continuation of collective ratemaking. Of the approximately 2,000 certificated household goods carriers who operate in our Nation, all are engaged in collective ratemaking. I have noted that the 1980 legislation provided movers with ". . . maximum . . . flexibility in pricing their services and meeting the needs of their shippers" [5] and certainly this has occurred. It has occurred without interference or disruption from the maximum reasonable, non-discriminatory industry rate levels that have been developed through collective ratemaking. Collectively established maximum reasonable rate levels insure the assessment of reasonable rates and charges and permit the maintenance of a joint carrier pricing mechanism that is essential to continuation of a full coordinated national moving system. In our view, the ability of a society to have the capacity to move a family in tact, door-to-door, with all of the personal possessions necessary to sustain the family at no more than reasonable and non-discriminatory rates is a social necessity and must be continued.

Senator DANFORTH. Thank you, sir.

Mr. Russell.

Mr. RUSSELL. Good morning, Mr. Chairman.

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[4] 863,299 shipments in 1979 versus 817,083 shipments in 1983.

[5] H. Rep. No. 96-1372, 96th Con., 2nd Sess. 5, reprinted in [1980] U.S. Code, Cong. & Admin. News, Vol. 4, p. 4275.

My name is Richard Russell. I am president of the Mayflower Transit Co. of Indianapolis, IN, and I am also chairman of the board of directors of the American Movers Conference.

With me today is Charles Irions, who is the president of the American Movers Conference, which is a national trade association that represents about 1,100 or 1,200 movers and agents and carriers who handle collectively about 90 percent of all interstate moving business.

In our opinion, like the speaker before me, it is difficult to measure the overall impact of the act because of the varying economic conditions that we have been through during the last 4 years.

Thanks to recent improvements in the economy, though, our business has improved in 1984 to the point that during the first half of the year, shipment volume was 16 percent over the first half of 1983.

The increased volume of business, however, has been accompanied by a high rate of discounting. Contrary to a number of earlier predictions, the wide-ranging discounting practices that prevailed throughout the trucking industry during the recession have continued to increase even during the improved economy.

After several years of declining volume and profits the moving industry needs a sustained period of economic and regulatory stability so that carriers and agents can replace old equipment and also pay off debts that were incurred during the recession.

The effects of further deregulatory upheaval could bring about such things as jurisdictional confusion, overcapacity and crippling, discounts which could wipe out the improvements we are presently experiencing.

The primary limitations to any positive economic scenario are, however, the continuing growth of federal and state tax and regulation burdens. At the same time, their members are struggling with new highway use tax, fuel taxes, and excise tax increases.

We have just been confronted with a report of the congressional budget office concluding that another 2-cent-a-gallon increase in taxes truckers pay is needed because the highway trust fund may run out of cash by the end of the decade.

We strongly challenge that conclusion in light of a finding earlier this year by the same Federal agency that the highway trust fund had collected over $3 billion more than anticipated when the Surface Transportation Act of 1982 was passed.

In the midst of all this transition that our industry has been through, all of the changes that have been brought about by regulatory reform, and the economic challenges that we faced during the last 4 years, it is important that Congress maintain at least the stability of current Federal regulation in the household goods marketplace.

In particular, we feel that Household Goods Transportation Act provisions exempting applications of the antitrust laws to carrier agent relationships and pooling agreements have provided a vital foundation for an efficient and highly competitive interstate moving system.

On another issue, that of Government traffic on which we have testified several times in the past, we still feel that a clear assessment of the effect of the act on Government traffic is likewise diffi-

40-576 O - 85 - 6

cult to make. Regulatory reform in this area is seriously hampered by the existence of the many DOD and GSA rules under which we are still required to operate.

These rules are constantly being revised, modified, and expanded, and we have made mention of a number of particular points in the testimony that I will not go into right now because of time limitations.

In conclusion, we feel that a change from 50 years of tight regulation to a relatively free market does not come overnight or in a year or even in several years. It does not come without problems and difficult adjustments. Today, the moving industry is clearly in a transition period. Carriers and agents have realigned their business practices to accommodate the new freedoms granted by the act, and most have survived a serious recession.

At the present time, though, we are unable to assess definitively how much and to what extent regulatory reform or the economy have impacted the marketplace.

For this reason, we believe it is preferable to preserve the uniform nationwide legal framework for household goods movers and consumers, and thus avoid, at least for now, attempts to further deregulate motor carriers, and more specifically household goods carriers.

Thank you, sir.

Senator DANFORTH. Gentlemen, thank you very much.

[The following information was subsequently received for the record:]

AMERICAN MOVERS CONFERENCE,
Arlington, VA, October 25, 1984.

Hon. JOHN C. DANFORTH,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: You asked Mr. Richard L. Russell to respond to several questions relating to his testimony on September 25 before the subcommittee relating to the Household Goods Transportation Act. Enclosed are responses to those questions which are being forwarded on behalf of Mr. Russell.

Thank you for your continuing interest in the implementation of the Household Goods Transportation Act.

Sincerely,

CHARLES C. IRIONS, *President.*

Question. Do you consider the amount of discounting activity in the household goods moving industry to be a positive or a negative result of the Household Goods Transportation Act?

Answer. The discounting practices so prevalent throughout the industry have had both positive and negative results, depending upon your vantage point. Commercial shippers and C.O.D. customers with large loads being hauled long distances are of course very enthusiastic. Most of the discounting, however, occurs by application of contact agreements which reduces the level of supervision available to the public by the ICC.

Discounting has provided a selling tool which opens doors to national account shippers. In the long run though, discounting tends to result in a reduction of service and/or quality of service, and it negatively impacts independent contractor truck operators. If, however, the marketplace requires different levels of service based on price, then the results of discounting will be positive overall.

On the other hand, discounting can be very negative for small movers trying to maintain market share, especially during the cyclical off-season or in a falling economy. From the point of view of the smaller mover-agent, widespread discounting is a serious problem. The larger movers can best afford to lower their profit margin, thus much of the discounting appears to be at the expense of small agents and owner-operators.

Question. In your view, are there aspects of ICC regulation of household goods carriers which are of no particular use and therefore could be eliminated?

Answer. AMC brought to Congress' attention in our 1981 and 1982 oversight testimony examples of ICC regulation which several no useful purpose and were actually misleading to consumers, as well as costly to carriers. Our concerns centered around the ICC regulations found in 49 C.F.R.: Part 1056 which governs household goods carrier-consumer relationships, and Part 1057 concerning leasing arrangements with independent contractor truck operators.

In October 1983, pursuant to an AMC petition, the ICC reopened the rulemaking proceeding which had originally implemented the Part 1056 rules and announced that it was reviewing the rules with an eye toward possible revision. AMC comments in the Commission's regulatory review proceeding suggested that the ICC reduce and simplify many of their regulations. We are still awaiting a decision in the matter from the ICC.

I do not believe the present level of regulation over equipment and service agreement leases in the Part 1057 rules is necessary. There is a significant demand for independent contractor owner-operators and they have the flexibility of moving from carrier to carrier if they are not satisfied with their negotiated contracts. Real benefits will accrue to owner-operators because of business exigencies in a freer marketplace, not because of the policing efforts of a federal regulatory agency whose limited enforcement resources are already spread too thin.

Question. In your testimony you note problems associated with the transportation of government traffic. Has the situation with respect to government traffic improved in recent years or has it deteriorated?

Answer. With respect to military and other government traffic, the situation has not improved notably. The Department of Defense remains quite active in the area of traffic management, developing new rules and revising others. At the same time the General Service Administration (GSA) is exploring new and more complex approaches to the procurement and management of household goods traffic.

The latest example is the GSA solicitation of bids for household goods traffic between twelve pairs of cities. The solicitation consists of 134 pages of requirements and instructions for the mover to comply with in submitting a bid. We believe this represents a costly "administrative overkill" since less than one shipment a month is involved between many of the 24 cities involved.

Some improvements have occurred. The Department of Defense dropped its Alaska loss and damage program which was dictating the method carriers used in transporting household goods to Alaska. And, the DOD has acceded to industry's request that traffic to and from Alaska be considered as domestic traffic, putting it under the same rules as for other states, instead of the international traffic rules. In addition, the Military Traffic Management Command (MTMC) has automated the procedures by which carriers file individual rate tenders twice a year. This has improved the reaction time for editing, approving and disseminating the rates to the military installations and carriers concerned.

These changes are laudable, however, industry is still living with the Carrier Evaluation Program (CERS), the Pack and Crate Contractor Program, and it is faced with the possible extension of the Intrastate Rate Acquisition Program beyond the seven states where it is now in being. All of these programs represent an administrative burden.

The large moving companies and agents have been able to cope with the myriad of rules and regulations. However, they are a tedious and sometimes costly burden for the smaller movers, especially those who do not have a staff of administrative specialists to handle them.

Our greatest concern at the moment is not knowing what new rules and procedures the government traffic managers are planning for the future. It is apparent that they are continually seeking ways to further reduce transportation costs and at the same time expect more improvements in the quality of service. Unfortunately, there is a point at which no further gains can be made without a tradeoff, one for the other. Industry feels that the trade-off point has been reached. The DOD is receiving significant rate reductions in the higher volume of traffic channels. Further pressure for rate reductions—such as the set aside of 50% of the business for the initial low rate filing mover incorporated into MTMC's Intrastate Rate Acquisition Program—can be disastrous for the many other movers serving a particular military installation. Their competitive Rate Program for international traffic, which gives a significant portion of the traffic to one carrier, enticed several carriers into bankruptcy. Such bankruptcies are costly for the government because of the extra resources that must be used to get the goods moving again.

Speaking on behalf of the moving industry as a whole, for movers of all sizes, I believe that government designers of traffic management policy-makers should take a breather. They should evaluate and improve on their present programs before proceeding with new ones.

Question. What in your view is the single most important benefit that has resulted from enactment of the Household Goods Transportation Act?

Answer. Allowing carriers and agents increased flexibility while preserving a uniform, federal legal framework for the interstate transportion of household goods has been beneficial for the moving industry and the public.

Regulatory reforms in operational regulation and eased entry restrictions have encouraged movers to be innovative and diversify into other transportation markets. Because of the cyclical and imbalanced nature of household goods traffic, carriers and agents must expand into other related businesses in order to realize the most efficient use of personnel and equipment resources. If the economy continues to improve and the regulatory climate remains stable, a strong and financially-sound transportation system can be developed and maintained even at the lowest chain in the economic ladder.

Senator DANFORTH. My understanding of the testimony is that you do not want us to do anything. Is that right?

Mr. RUANE. Yes and no.

Mr. RUSSELL. Well, there are a couple of areas that I might mention if you are asking the question without going into too much detail.

We still feel that there is a lot of streamlining that could be done in the military regulations. It has been our understanding all along that we were to be dealt with in a uniform manner by both military customers and our regular commercial customers, and that is not the case.

We still feel like there is a tremendous paperwork burden that is required by the Interstate Commerce Commission's rules and regulations that was not contemplated.

Finally, and this may be the most significant, we see a really serious problem ahead in the State taxation area, and even more recently in the Federal taxation of truckers area. We are getting all kinds of new taxes on a very consistent basis from every State around the country.

The only answer we see to that is some kind of Federal assistance in getting some sort of uniformity in that State taxation area. In our company, that is the fastest increasing expense item that we have, State taxes. It does not show any sign of letting up.

In the Federal area, I made mention of some of the increases in the fuel tax that had already been proposed in a sense, at least enough to get our attention, and secondly, recently the IRS came out with its interpretation of how the Federal highway use tax increase that was part of the SCAA was to be paid.

That does not seem to make much sense, either. We could use some help on that item. It is going to increase expenses for many movers.

Senator DANFORTH. Does anybody else have any comments?

Mr. MILLER. That is fine.

Senator DANFORTH. Gentlemen, thank you very much.

Our next panel is Susan Perry, vice president for congressional affairs, the American Bus Association; Mr. Paul Nagle, assistant to the executive director, United Bus Owners of America; Mr. K.R. Moore, vice president and director of the Bus Division, United Transportation Union; and John Rowland, president of the Amalgamated Transit Union.

Ms. Perry.

STATEMENTS OF SUSAN PERRY, VICE PRESIDENT, CONGRESSIONAL AFFAIRS, AMERICAN BUS ASSOCIATION; K.R. MOORE, VICE PRESIDENT AND DIRECTOR, BUS DIVISION, UNITED TRANSPORTATION UNION, ACCOMPANIED BY J.R. SNYDER, NATIONAL LEGISLATIVE DIRECTOR, AND EDWARD D. FRIEDMAN, COUNSEL; AND ROBERT MOLOFSKY, LEGISLATIVE DIRECTOR, AMALGAMATED TRANSIT UNION

Ms. PERRY. Thank you, Mr. Chairman.

I appreciate the opportunity to present the views of the American Bus Association on the second anniversary of bus regulatory reform.

I am Susan Perry, vice president for congressional affairs of the association. ABA has grown to some 3,500 members who include 1,025 bus companies and tour operators, associates who supply the industry, and a broad range of travel and tours and entities throughout the country who rely on bus service to bring them tours and charters.

At the initial oversight hearings before the subcommittee last year, no definitive judgment could be made about the impact of the Bus Act on the industry or on the public. It still is too soon to render a final judgment, but the long-term impact of the legislation is becoming clear.

Competition has become progressively more intense, both from within and from outside of the bus industry. Competition unleashed by the Airline Deregulation Act of 1978 has depressed fares for regular route service. The subsidized competition of Amtrak, whose operating subsidy for fiscal year 1984 is more than $700 million, and that of public transit authorities also have hurt the bus industry.

For the class 1 regular route carriers designated as study carriers by the ICC, total operating revenues declined from $548.7 million during the first two quarters of 1983 to $518.3 million for the same two quarters in 1984. Operating ratios for those same first two quarters rose from 102.7 percent in 1983 to 104.6 percent in 1984.

In 1983, the first full year of bus regulatory reform, class 1 motor carriers of passengers lost $10.1 million, resulting in an operating ratio of 100.4 percent, and a negative return on investment of 1 percent.

Unfortunately, no immediate turnaround is in sight. Some carriers have benefited from regulatory reform with the removal of onerous burdens of State economic regulation, including the inability to adjust schedules in a timely fashion, to adjust depressed intrastate rates, and to withdraw from hopelessly unprofitable intrastate service.

For many individuals, deregulation has opened the door of opportunity. As a result, about 2,900 new entrants have come into the business. On the other hand, some established carriers have been hit hard by the flood of new competitors, and for them deregulation is not a blessing. A number of them have gone out of business,

been taken over by other carriers, or are in feeble financial condition.

We are definitely in a severe shakeout period, and it is not clear how the public interest will work out. Some of the benefits of regulatory reform legislation which the industry had anticipated and which we believe were contemplated by the Congress have not been realized.

The ICC's automatic grant policy has made entry regulation an administrative charade. Neither the ICC nor the DOT has concerned itself with the safety fitness of new entrants. No concern about predatory pricing nor monopolistic practices has been manifested, and the antitrust immunity for collective ratemaking confirmed by the Congress has been treated by the ICC with undisguised hostility.

As the bus industry enters the third year of regulatory reform, it must decide how to respond to the ICC's proclivity to disregard its mandate. We must decide first whether the Commission's overriding policy of nonregulation can be altered by changes in Commission personnel, by admonitions from its parent congressional committees, or by amendments to the Bus Act.

If these remedies prove to be infeasible or ineffective, serious consideration then must be given to ICC sunset. Total deregulation is a myth, we believe. Even without the ICC, there are important regulatory functions which some Federal agency must perform. If the ICC will not or cannot perform these functions, we must think about a new regulatory structure. If it becomes necessary to create a new structure, much can be learned from the first 2 years of experience under the Bus Act.

In conclusion, Mr. Chairman, the Bus Regulatory Reform Act, as you very well know, is the product of a carefully crafted compromise. None of the participants in the legislative process was completely satisfied.

In many respects, the ICC has indeed executed the will of the Congress, but in disregarding the public interest standard of entry, in failing to enforce fitness standards, and in threatening to abolish antitrust immunity, the ICC has denied to the carriers and to the public some of the benefits anticipated from regulatory reform.

Some crucial issues remain to be decided by the ICC. Final resolution of these issues, automatic entry, subsidized transit authority, charter and special applications, predatory pricing, safety fitness, and retention of limited antitrust immunity for collective ratemaking will not only shape the future of the bus industry, but will indicate whether the ICC itself is worth preserving. Thank you.

Senator DANFORTH. Thank you.

[The statement follows:]

STATEMENT OF NORMAN R. SHERLOCK, PRESIDENT, AMERICAN BUS ASSOCIATION

Mr. Chairman and members of the subcommittee: I appreciate this opportunity to present the views of the American Bus Association on the second anniversary of bus regulatory reform.

ABA has grown to 3,500 members who include 1,025 bus companies and tour operator entities, associates who supply the industry, and a broad range of travel and tourism entities throughout the country who rely on bus service to bring them tours and charters.

At the initial oversight hearings before the Subcommittee last year, no definitive judgment could be made about the impact of the Bus Act on the industry and the public. It is still too soon to render a final judgment but the long-term impact of the legislation is becoming clear.

Competition has become progressively more intense both from within and from outside the bus industry. Competition unleased by the Airline Deregulation Act of 1978 has depressed fares for regular-route service. The subsidized competition of Amtrak [1] and that of public transit authorities have also hurt the bus industry.

For the Class I regular-route carriers designated as study carriers by the ICC,[2] total operating revenues declined from $548.7 million during the first two quarters of 1983 to $518.3 million for the same two quarters in 1984. Operating ratios for the first two quarters rose from 102.7 percent in 1983 to 104.6 percent in 1984.

In 1983, the first full year of bus regulatory reform, Class I motor carriers of passengers lost $10.1 million, resulting in an operating ratio of 100.4 percent, and a negative return on investment of one percent. Unfortunately, no immediate turnaround is in sight.

Some carriers have benefited from regulatory reform with the removal of onerous burdens of State economic regulation—the inability to adjust schedules in a timely fashion, to adjust depressed intrastate rates, and to withdraw from hopelessly unprofitable intrastate service. For many individuals, deregulation has opened the door of opportunity and about 2,900 new entrants have come into the business. On the other hand, some established carriers have been hard hit by the flood of new competitors and for them deregulation is not a blessing. A number of them have gone out of business, been taken over by other carriers, or are in feeble financial condition. We are definitely in a severe shake-out period and it is not clear how the public interest will work out.

Some of the benefits of regulatory reform legislation, which the industry had anticipated and which, we believe, were contemplated by the Congress, have not been realized. The ICC's automatic grant policy has made entry regulation an administrative charade; neither the ICC nor DOT has concerned itself with the safety fitness of the new entrants; no concern about predatory pricing or monopolistic practices has been manifested; and the antitrust immunity for collective ratemaking conferred by the Congress has been treated by the ICC with undisguised hostility.

As the bus industry enters the third year of regulatory reform, it must decide how to respond to the ICC's proclivity to disregard its mandate. We must decide, first, whether the Commission's overriding policy of non-regulation can be altered by changes in Commission personnel, by admonitions from its parent Congressional committees, or by amendments to the Bus Act. if these remedies prove to be infeasible or ineffective, serious consideration must be given to ICC sunset.

Total deregulation is a myth. Even without the ICC, there are important regulatory functions which some Federal agency must perform. If the ICC cannot or will not perform these functions, we must think about a new regulatory structure. If it becomes necessary to create a new structure, much can be learned from the first two years of experience under the Bus Act.

ENTRY POLICY—GENERAL

As shown by Appendix A to my statement, over 300 applications have been filed for authority to transport passengers over regular routes. Not a single application has been denied. The ICC's automatic grant policy is a reflection of its conviction that no application for authority to transport passengers can ever be inconsistent with the public interest. This Committee said in its report on the Bus Act:

> * * * the provision [on entry procedure] creates a presumption that the grant of the application is consistent with the public interest. This means that the burden will be on any protestant to provide sufficient evidence to negate the presumption of consistency. It should be clearly understood, however, that the burden placed on protestants is not insurmountable, and that the entry test should not be treated by the ICC as a regulatory charade.[3]

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[1] Amtrak's operating subsidy for fiscal year 1984 is $716.4 million.

[2] ICC regulations designate as "study carriers" those carriers which must file particular data in general fare increase cases. Study carriers are defined as those having at least $3,000,000 in gross annual operating revenues and which derive $500,000 or more in annual operating revenues from the issue traffic. 49 CFR Park 1139—Subpart B.

[3] S. Rep. No. 411, 97th Cong., 2d Sess. (1982) 16.

Over 2,900 applications for operating authority have been filed under the Bus Act. A few applications have been denied on procedural grounds and one or two for safety reasons but all others have been granted. Although the Congress specifically prohibited master licensing,[4] the ICC is achieving the same result by its automatic grant policy.

The Commission's thoughtless grants of operating authority have been many but one example will suffice. In January 1983, Adirondack Transit Lines, Inc., applied for authority to transport passengers over routes extending generally north from New York City but did not desire to incur any obligation to provide commuter bus service. Hudson Transit Lines, Inc., did not oppose the service proposed by Adirondack but asked that any authority issued be restricted against the performance of commuter service. Notwithstanding the agreement of the parties, the Commission on June 27, 1984, granted unrestricted authority, thus imposing unwanted commuter service obligations on Adirondack and subjecting Hudson to potentially destruction competition. Both Adirondack and Hudson, joined by ABA, have appealed to the United States Court of Appeals for the second Circuit.[5]

ENTRY POLICY—RECIPROCAL TREATMENT

Section 6 of the Bus Act prohibited the ICC for a two-year period from granting operating authority to motor carriers domiciled in a contiguous foreign country but authorized the President to lift the moratorium if he determined such action to be in the national interest. The moratorium was lifted with respect to carriers domiciled in Canada but not for Mexican carriers because Mexico prohibits grants of operating authority to persons from the United States.

As permitted by the Bus Act, President Reagan recently extended the moratorium on the issuance of certificates and permits to Mexican bus and truck operators to September 19, 1986. We commend the President for that action.

There remains a loophole which must be plugged. Operations within contiguous municipalities which straddle the U.S.-Mexican border do not require a certificate or permit and are exempt from key provisions of the Federal Motor Carrier Safety Regulations. ABA has asked DOT to initiate a rulemaking proceeding looking toward removal of the safety exemption. The ICC does not seem inclined to remove the exemption from economic regulation which permits Mexican motor carriers to operate freely in the United States portion of the border cities, frequently with unsafe vehicles and inadequate insurance.[6] To fully close the loophole, legislation along the lines proposed by amendments to H.R. 5530 should be enacted.

ENTRY POLICY—CHARTER APPLICATIONS OF SUBSIDIZED TRANSIT AUTHORITIES

Recognizing that competition between subsidized and unsubsidized charter bus operators should not be encouraged, the Congress made the charter and special applications of public transit authorities subject to the public interest entry standard. Carriers which do not receive governmental financial assistance for the purchase or operation of buses may obtain charter and special operations authority merely upon proof of fitness.

Five applications to transport passengers in charter and special operations have been filed by recipients of substantial governmental financial assistance. Two applicants seek authority between all points in the United States;[7] one seeks broad radial authority to all points in the United States;[8] and the other two seek less extensive authority.[9]

We believe it would be contrary to the public interest and the national transportation policy to permit publicly subsidized mass transportation entities to depart from their established mission of providing commuter service and to expand their charter capability beyond their urban base of operations. There is no reason for

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[4] 49 U.S.C. 10922(c)(5) prohibits the ICC from basing findings of safety fitness and the public interest in application proceedings upon general findings developed in rulemaking proceedings.

[5] Docket Nos. 83-4165 and 83-4171, *Hudson Transit Lines* v. *United States*.

[6] A petition for a declaratory order seeking removal of the commercial zone exemption for municipalities along the U.S.-Mexican border was filed with the ICC by LaSalle Trucking Co. on May 11, 1984. The ICC has not yet acted on the petition (Docket No. MC-C-10910).

[7] MC-169015—Canadian National Railway Co.; and MC-169358—Cambria County (Pa.) Transit Authority.

[8] MC-164973—Manchester (N.H.) Transit Authority.

[9] MC-168258—Panhandle Area Transit, Inc., d.b.a. P.A.T.; and MC-168774—Audubon Area Community Services, Inc.

these entities to be seeking nationwide charter and tour authority when that service can be provided by privately-owned carriers at no cost to taxpayers.

Because of the novelty and importance of the issues involved, ABA asked the ICC over a year ago to consolidate for decision all of the applications filed by subsidized transit operators for charter and special operations authority. No action has been taken on our petition to consolidate.

Chairman Packwood explained the intent of the Congress as follows: [10]

. . . However, there is now a disturbing development in the area of entry. I am referring to government subsidized entities seeking charter and special operations authority which will directly compete with many privately-owned companies.

. . . The Bus Act was not intended to provide a loophole where by publicly-subsidized mass transit authorities could obtain nationwide charter and tour authority.

I understand that seven applications for extensive charter and bus operations authority have been filed at the Interstate Commerce Commission by recipients of governmental financial assistance. The Commission has not decided any of these cases. I am hopeful that the Commission will carefully consider the legislative history of this provision in reaching its final decision.

Chairman Howard of the House Committee on Public Works and Transportation has also explained that the Bus Act was not intended to provide publicly subsidized mass transit authorities with a means for obtaining extensive tour and charter authority.[11]

SAFETY FITNESS

Neither the ICC noir the DOT's Bureau of Motor Carrier Safety has investigated the safety fitness of more than a handful of applicants for operating authority. It is inconceivable that all of the more than 1,600 first-time applicants for charter and special operations authority could pass a rigorous safety check. Both the ICC and DOT plead lack of funds and personnel but we see no reason why they cannot make a genuine, concerted effort during the application process using the resources they have.

ABA has always recognized that relatively free entry must be accomplished by an intensified safety effort. We supported the Motor Carrier Safety Act of 1982 (S. 2174) introduced by Senator Danforth for himself and others to increase penalties for safety violations, to broaden DOT enforcement authority, and to achieve greater uniformity in motor carrier safety regulation. By a petition filed August 30, we asked DOT to remove the exemption from safety regulation which applies to the operations of Mexican carriers in contiguous municipalities which straddle the U.S.—Mexican border.

Safety, after all, is and should be of critical concern to everyone. The intercity bus industry has always given safety the highest priority and there is no reason why new entrants into the business should be allowed to deviate from safety standards through administrative default. The overiding premise should be that all buses should be safe if they are allowed to use the nation's streets and highways, no matter who owns or operates them.

INSURANCE

Section 18(b) of the Bus Act provides that the minimum levels of financial responsibility established by the Secretary of Transportation shall be—

(1) Not less than $5,000,000 for any vehicle with a seating capacity of 16 passengers or more; and

(2) Not less than $1,500,000 for any vehicle with a seating capacity of 15 passengers or less.

These minimum levels of insurance would have become effective on November 19, 1983, but for the action of the Secretary of Transportation in reducing for a two-year period the statutory minima from $5,000,000 to $2,500,000 and from $1,500,000 to $750,000. We disagree with the Secretary's findings that these reductions will not adversely affect public safety.

To provide better protection against unsafe and under-insured Mexican bus operators, ABA recently asked DOT to institute a rulemaking proceeding looking toward adoption of a regulation requiring every Mexican bus operator to carry on the vehi-

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[10] Congressional Record, October 4, 1983.

[11] Extension of Remarks, dated October 6, 1983, and published in the Congressional Record at page E4896 on October 7, 1983.

cle evidence of the required insurance when transporting passengers in the United States.

INTRASTATE BUS RATES

One of the most important benefits derived from the Bus Act has been the ability of carriers to increase depressed intrastate bus rates. As shown in Appendix A to this statement, the ICC has granted the carriers' requests in 32 of the 35 cases appealed from State commissions. Even after applying the increases approved in these cases, the intrastate rates were substantially below the comparable interstate rates. Clearly, the carriers have exercised restraint in raising fares.

The ICC has developed a sound set of rules which have enabled it to dispose of intrastate rate cases within the 60-day period allotted by the Congress. Also, the ICC has applied standards that are clear and rational. In the typical case, the ICC has ascertained the extent to which intrastate rates are below comparable interstate levels. It then examines the evidence to determine whether there is any justification for the rate disparity. Finally, the ICC evaluates any cost data of record to determine whether the intrastate rates impose an actual burden of interstate commerce.

Passengers will also benefit from the rate preemption provisions of the Bus Act. As noted in the report of your Committee, discriminatory State rate regulation had compelled interstate passengers to subsidize intrastate passengers, the net effect of which was to discourage entry into the regular route market.[12] Elimination of the cross-subsidy should improve both interstate and intrastate service.

DISCONTINUANCE OF INTRASTATE SERVICE

The exit provisions of the Bus Act, coupled with the rate and schedule preemption provisions, will enable many bus carriers to survive the intense competition generated by the Bus Act. After referring to "the near impossibility for carriers to discontinue strictly intrastate routes," this Committee concluded in its report on the bill which became the Bus Act:

As a result, a large number of routes, particularly intrastate routes serving rural communities, are cross-subsidized by more profitable interstate routes and charter operations. This has a corresponding effect on interstate traffic as well.[13]

Carriers have been cautious in seeking State and ICC permission to discontinue service. As indicated in Appendix A to this statement, the ICC had decided only 26 discontinuance cases of September 5, 1984. In this area, as in the rate preemption area, the ICC has enunciated decisional standards that are clear and fair. In essence, the ICC balances the need for the service proposed to be discontinued against the burden of continued operation. In each case, the revenues and costs associated with operations over the route must be ascertained together with whether there is a realistic prospect of subsidy.

Petitions to discontinue intrastate service were granted in full in 23 of the 26 cases filed. During the first two years of the Bus Act, carriers have been able to get rid of their worst losers, in some cases by transferring an unprofitable route to a smaller carrier with lower costs. Termination of service has been offset, at least in part, by the institution of new service under the lower entry standards of the Bus Act. We agree with the following conclusion of the Motor Carrier Ratemaking Study Commission:

Most communities losing bus service will no be adversely affected to any great degree, because the data show that persons residing in those communities, including older Americans, have not intensively used the available services.[14]

CONCLUSION

The Bus Regulatory Reform Act of 1982 was the product of a carefully crafted compromise. None of the participants in the legislative process was completely satisfied. In many respects, the ICC has executed the will of the Congress, but in disregarding the public interest standard of entry, in failing to enforce fitness standards, and in threatening to abolish antitrust immunity, the ICC has denied to the carriers and to the public some of the benefits anticipated from regulatory reform.

Some crucial issues remain to be decided by the ICC. The final resolutino of these issues—automatic entry, subsidized transit authority charter/special applications,

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[12] S. Rep. No. 97-411, 97th Cong., 2d Sess. (1982) 11.

[13] S. Rep. No. 97-411, 97th Cong., 2d Sess. (1982) 8.

[14] Report of the Motor Carrier Ratemaking Study Commission to the President and the Congress of the United States (May 15, 1984) 423.

predatory pricing, safety fitness, and retention of antitrust immunity for collective ratemakings [15]—will not only shape the future of the bus industry but will indicate whether the ICC is worth preserving.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR DANFORTH AND THE ANSWERS THERETO

Question. On balance, do you believe the Bus Regulatory Reform Act of 1982 has had a positive effect or a negative effect on the intercity bus industry?

Answer. It is difficult to say as there have been both positive and negative effects. As we said in the testimony, we are in a severe shake-out period and the results are not yet clear. There are many new entrants in the bus business but increased competition has driven a number of companies out of business. I believe that the jury still is out and we will not know all of the effects of deregulation for some time to come.

Question. You express concern in your testimony about potential entry into charter markets by subsidized carriers. Why is this of such great concern to the private intercity bus industry?

Answer. Subsidized carriers in the charter business present unfair competition to the private carriers who must buy their equipment themselves and pay all of their operating expenses. And, since the tax legislation enacted earlier this year, private carriers now must pay a 3¢ a gallon federal diesel fuel tax from which the public transit authorities are exempt. The mission of public transit was to move people within an urbanized area, mainly to and from work. It never was intended that transit compete with the private sector where the private operators are ready, willing, and able to provide service. What was originally "incidental charter" has become wholesale service with one transit agency now having secured nationwide, point to point charter authority from the ICC.

Senator DANFORTH. I see Mr. Nagle is not here. Is there anyone here representing the United Bus Owners?

[No response.]

Senator DANFORTH. Very well, then. Mr. Moore.

Mr. MOORE. Thank you.

My name is Kenneth R. Moore, and I appear here today on behalf of the United Transportation Union to offer our views and comments in these oversight hearings involving the Bus Regulatory Reform Act of 1982.

As you know, the United Transportation Union is one of the largest and the oldest of the transportation labor organizations affiliated with the AFL-CIO. As vice president of the UTU in charge of the Bus Division, I am involved in one way or another with the operations of both the private and public bus systems throughout the country.

Because of my position, I have a day-to-day working knowledge of the strengths and weaknesses of the bus industry.

With me to assist in this hearing is Mr. Jim Snyder, on the end, UTU national legislative director, and Mr. Edward Friedman, UTU counsel.

The UTU regarded deregulation with reservation at the time of its passage in 1981 and 1982. And we were and remain troubled by its impact on the stability of the bus industry and on bus employment and on bus safety.

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[15] We are pleased that the ICC in Ex Parte No. MC-172 denied pleas to terminate collective ratemaking for all motor carrier rate bureau activity. On the other hand, the Commission has not acted on the amended rate bureau agreement submitted for approval by the National Bus Traffic Association over 18 months ago.

The subject of bus industry stability was covered a few weeks ago in an article appearing in the Wall Street Journal reporting heavy inroads in the bus ridership from destructive cut rate competition by airlines taking advantage of the relaxed entry requirements of the Airline Deregulation Act.

These new airlines are operating cut rate service with cut rate wages, and I believe cut rate conditions of employment. In addition to destructive cut rate competition from the new airlines, there is a growing cut rate competition from mom and pop bus companies, particularly in the charter area.

Destructive competition from these sources has cut deeply into the ridership of both Greyhound and Trailways. This downward trend began to show early this year, and has continued through the summer. Greyhound and Trailways, for example, have abandoned a large number of their routes and have laid off a large number of their work force, and have reduced their bus charters.

The loss of ridership and bus charters exact a heavy toll on the employees. This toll is a hard one to bear. Wage levels in the bus industry have not kept pace with increases in the cost of living. As a result of the concessions a few years ago, real wages have fallen, and further reductions are threatened.

The bleak prospects of the bus industry are, we believe, the result of unfair and destructive competition by the deregulated airlines and the mom and pop bus companies. So far as we know, these operators are able to operate on a cut throat basis because their standard of wages and working conditions are far below the industry level.

Let me describe an example of this. A marginal company providing interstate airport service as well as some charter service sought and obtained entry into the commuter bus system in the New York metropolitan area.

Sworn testimony indicated that the fleet of aging station wagons and buses maintained by this operator was in constant heavy use and in constant need of repair. Maintenance of this fleet was supplied by a single mechanic who was overwhelmed by the demand of repairs and for these cars and buses.

One driver testified he had been compelled to drive with a faulty transmission, with loose and rattling tail pipes, defective shock absorbers, and leaky exhaust system. The pay of the drivers was at times at or below the Federal minimum wage. Hours were in excess of the maximum established by the Hours of Service Act, and in possible violation of the Federal wage and hour law.

One witness testified that he was required to work a series of consecutive charters involving 32½ hours' driving and working time in a 56½-hour period, and that he was threatened with discharge when he objected to these assignments.

According to sworn testimony, the applicant from time to time had falsified his records in order to overcharge its regular contract customers or to underpay its employees. There were no benefits of any kind, no overtime, no vacation, no holiday, no sick leave, and no health insurance.

The Interstate Commerce Commission, in disregard of sworn testimony, which we have described, rejected our request for a full hearing, overruled our protests, and authorized the company to

conduct commuter bus operations in an area well and adequately served by small and efficient commuter bus companies.

The Commission, in overruling our protests without an adequate hearing, and in granting the application, demonstrated total indifference to the National Transportation Policy.

I refer to, of course, the policy to promote safety, adequate, economical, and efficient transportation, to encourage the establishment and maintenance of reasonable rates for transportation without unfair and destructive competitive practices, to encourage fair wages and working conditions in the transportation industry, and to provide and maintain commuter bus operations.

Competition by a carrier of the kind described clearly falls within the definition of unfair or destructive competitive practices and undercuts the fair wages and working conditions in the transportation industry. This kind of open door decisionmaking by the Commission contributes to the bleakness of the landscape in the bus industry.

Another adverse aspect of the Bus Deregulation Act has been its impact on service in areas of light density. These are, for the most part, small communities and small towns which have relied almost entirely on bus service as the only mode of public transportation available to them.

Route abandonments have dried up these essential supports to the people living in these areas. Public service is no longer available. I will cut it short, saying that deregulation simply is not working. It is hurting the poor, the downtrodden, and the people that cannot afford automobiles.

Mr. Chairman, we thank the committee for providing us with the opportunity to present these views, and I ask that my statement be included in the record.

[The statement follows:]

STATEMENT OF K.R. MOORE, VICE PRESIDENT, DIRECTOR, BUS DIVISION, ON BEHALF OF THE UNITED TRANSPORTATION UNION

My name is Kenneth R. Moore. I appear here today on behalf of the United Transportation Union to offer our views and comments in these oversight hearings involving the Bus Deregulation Act of 1982.

As you know, the United Transportation Union is one of the largest and the oldest of the transportation labor organizations, affiliated with the AFL-CIO, serving the major modes of surface transportation throughout the United States. As Vice President of the UTU in charge of the bus division, I am involved in one way or another in the operation of both the private and public bus systems throughout the country. It is upon this basis that I have a day to day, hour to hour working knowledge of the strengths and weaknesses of the bus industry.

With me today to assist in this testimony is J.R. Snyder, UTU National Legislative Director, and Edward D. Friedman, UTU counsel.

The record will show that the subject of deregulation generally was regarded by the UTU with reservations during the period of its consideration by the Congress in 1981 and 1982. We were and remain particularly troubled by its potential destabilizing effect on the bus industry, on bus employment and on bus safety.

Accommodations in the areas of job stability and safety were made during the course of the 1982 legislation and while they fell short of our aims, they provided some measure of employee protection and safety—at least a step in the right direction. Perhaps we have not as yet had enough experience with the operation of the new law to measure its full impact on the industry's stability and on jobs and safety but on the record thus far we have reason to remain concerned.

First, let us take a brief look at the impact of these deregulation laws on the stability of the industry and on employment. The subject of bus industry stability was covered a few weeks ago in an article appearing in the Wall Street Journal report-

ing that heavy inroads in bus ridership are being made by cut rate competition from a growing list of new airline entrants taking advantage of the relaxed entry requirements of the Airline Deregulation Act. These new airlines are operating cut rate service with cut rate wages and conditions of employment.

Let me provide an example reported by the Journal. Trailways' 1983 charge for trips between Dallas, Texas and Little Rock, Arkansas was $47.00. In March of this year Southwest Airlines began a Dallas-Little Rock run setting its ticket price at $47.00 for peak flights and $32.00 on weekends. Three months later Trailways lowered its bus fare to a flat $30.00.

Let me give you another example from the Journal article. It quotes the marketing manage of People Express as saying: "When we open up a route we price equal to or lower than the bus." He adds that the bus companies after a time began to adjust to the competition and lower their rates.

And that's what's happening not only in the Middle West but in all parts of the country. Examples here in the East would involve the cut rates provided by these airlines on the Washington-New York run particularly.

Added to this is the growing cut rate competition from "Mom and Pop" bus companies, particularly in the charter area. Under the relaxed entry standards, these companies are beginning to cut deeply into the revenues of the major bus companies.

There is growing evidence that as a result of this cut rate competition from both sources, ridership on both Greyhound and Trailways is on a downward slide. This trend began to show up early this year and has continued through the summer. We understand that Greyhound, which has 60 percent of bus ridership in the United States, lost $17 million during the first six months of 1984. In consequence of the loss of revenue from this cut rate competition, Greyhound has eliminated one third of its routes and has laid off about one third of its work force. Its efforts to impose deep reductions in cost of operations resulted in a long strike early this year which was settled by, among other things, a substantial decrease in wages, on the average of 14.8 percent.

The loss of ridership and of bus charters exacts a heavy toll on all conditions of employment, particularly wages.

This toll is a hard one to bear. Wage levels in the bus industry have barely kept pace with increases in the cost of living over the past decade. As of today it appears that real wages—that is the comparative purchasing power of the bus wage—have fallen. If further reductions should be the price of the deregulation acts, real wages will drop significantly.

The bleak prospects in the bus industry at this point in time are even bleaker if one considers the impact of this imbalance of the transportation system's employment.

These bleak prospects are, we believe, directly attributable to the practices of the new deregulated airlines and the new deregulated bus systems—practices which can be fairly characterized as unfair or destructive. So far as we know, these operators are able to function on a cut throat basis because of a standard of wages and working conditions far below that of the established norm for the industry.

As I have already pointed out, the norm has barely kept pace with the cost of living increases over the past dozen years. If anything, real wages in the industry have eroded to some extent with prospects of further erosion in the future which I have already described. The wages and conditions of employment of these new competitors are unfair when measured against industry practices and the standards generally applicable in the United States. Unfair wages and conditions set the stage for cut throat competition with destructive effect on the operations of fair employers maintaining fair employment standards.

A recent experience in the eastern part of the United States provides an example of what we are attempting to describe. A marginal company, providing interstate airport service, sought and obtained entry into the commuter bus system serving a part of the seaboard. Sworn testimony indicated that the fleet of station wagons maintained by this operator in airport service was in constant heavy use and in constant need of repair. Maintenance of this fleet of vehicles was supplied by a single mechanic who was overwhelmed by the demand for repairs for these vehicles, most of which were aging.

One driver testified that he had been compelled to drive at varous times with a faulty transmission, with loose and tattling tailpipes, defective shock absorbers, and leaking exhaust system. The pay of the drivers was at times at or below the federal minimum wage; hours were in excess of the maximum established by the Hours of Service Act and at times in possible violation of the federal Wage and Hour law. One witness testified that he was required to work a series of consecutive charter

parties, ranging from Williamsburg, Virginia to Niagara Falls, New York, involving 33½ hours driving and working time in a 56½-hour period and that he was threatened with discharge when he objected to the enormous hours required by the continuous assignments.

According to sworn testimony, the applicant from time to time has falsified its records in order to overcharge its customers or to underpay its employees. There were no benefits of any kind; no overtime, no paid vacations, no holidays, no sick leave, no health insurance.

The Interstate Commerce Commission, in disregard of the sworn testimony which we have described, rejected the requests of the protestants for full hearing, overruled our protests and authorized the company to conduct commuter bus operations in an area well and adequately served by small and efficient commuter bus companies.

In so doing, the Interstate Commerce Commission ignored the Transportation Policy set forth in the Interstate Commerce Act declaring that it is the policy of the United States, in the regulation of all modes of transportation subject to federal law, "to promote safe, adquate, economical and efficient transportation . . ."; "to encourage the establishment and maintenance of reasonable rates for transportation without . . . unfair or destructive competitive practices . . ."; "to encourage fair wages and working conditions in the transportation industry"; and "to provide and maintain commuter bus operations."

The Bus Deregulation Act directs the Commission, in effect, to deny an application of this kind, upon finding "on the basis of evidence presented by any person objecting to the issuance of the certificate, that the transportation to be authorized is not consistent with the public interest."

Under its rules, the Commission states that the new application entries are presumed to be consistent with the public interest and that protestants "bear the burden of providing sufficient evidence to negate this presumption."

The quoted provisions of the National Transportation Policy plainly define the public interest.

We are satisfied that competition by a carrier of this kind would involve an "unfair and destructive competitive practice" and would serve to destabilize the "fair wages and working conditions in the transportation industry."

The Commission, in overruling the protests without an adequate hearing and in granting the application, demonstrated total indifference to the explicit National Transportation Policy.

The implications in this kind of decision-making by the Interstate Commerce Commission contribute to the bleakness of the landscape of the bus industry unless something is done to correct the Commission's course by some action emphasizing the weight to be given to the transportation policy in cases of this kind.

Another troubling aspect of the Bus Deregulation Act has been its impact on service in areas of light density throughout the country, largely rural. There are, for the most part, small communities and small towns which have relied almost entirely on bus service as the only mode of public transportation available to them. Route abandonments have dried up these essential supports to the people living in these areas. Public service is no longer available.

The eased exit requirements in the Act, it appears, have all but eliminated the public service policies of bus transportation and in its stead have placed profits as the principal consideration in the determination of route structure.

We have touched on only a few of the elements which we believe should be taken into account in this oversight hearing. There are, of course, others. But of these, we should like to return briefly to the need for strengthening the job protection features of the Bus Deregulation Act.

There is a pool of skilled and safe bus drivers, experienced in the operation of their vehicles over all kinds of road and in all kinds of weather conditions. It is important, we believe, to maintain this pool. The present law hardly does this. The reverse appears to be true.

The Deregulation Act provides for a system of preferential treatment for employees laid off in consequence of deregulation. The burden is on the employee to demonstrate that deregulation caused his termination. This feature of the Act has not worked. Layoffs in the industry take the form of furloughs and not of termination. Because these employees are furloughed, rather than terminated, they are not considered to be protected and are not eligible to participate in the system contemplated by the Act. This feature of the law should be modified to cover all employees except those terminated for cause.

The Bus Deregulation Act of 1982 was designed to respond to a need to encourage expansion and improvement of bus service in the United States, a program which we whole-heartedly endorse. Thus far, it appears that it has failed in its purpose.

We thank the Committee for providing us with an opportunity to present to it these views.

[The following information was subsequently received for the record:]

UNITED TRANSPORTATION UNION,
October 31, 1984.

Hon. JOHN C. DANFORTH,
Chairman, Surface Transportation Subcommittee, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: This will reply to your letter of September 25, 1984, asking for our comments on various features of the Bus Regulatory Reform Act of 1982, reflecting the experience of the United Transportation Union on the impact of this legislation on employment generally and, further, on the adequacy on the job protection provisions of the Act.

It is undeniable that the impact of the regulatory reform legislation on employment in the passenger motor carrier field has been severe. Our information indicates that bus and airline deregulation together have enacted a heavy toll on the major components of the bus industry with airline deregulation undoubtedly causing the most severe damage. The major bus carriers have suffered serious inroads into ridership and revenue on regularly scheduled runs as well as on charters. As a consequence, collective bargaining concessions have been exacted by one carrier following a lengthly and costly strike about one year ago. Substantial wage reductions have been imposed by the other, reflecting in large part of the changing nature of the role of the bus industry attributable to the impact of these new laws. There have been extensive furloughs of employees with additional layoffs threatened.

If the bus industry was weak prior to bus reform, its condition has considerably worsened as a direct result of the new laissez faire policy of governmental abstention.

As appears from our testimony and that of the American Bus Association in the hearings before your Committee on September 25 of this year, the Interstate Commerce Commission, acting under the authority derived from the deregulation act, has pursued an open door policy of approving bus entry applications automatically. It has ignored the National Transportation Policy in all respects, particularly those elements of policy bearing on fair wages and working conditions. The concept of public services, so deeply rooted in the history of federal transportation legislation, has all but disappeared in favor of concepts of competition, however ruthless and predatory.

This has meant the introduction of new entrants in the bus industry on a broad scale with evidence of the undercutting of established wage standards to gain competitive advantages.

Thus far it would appear that the harm to the established carriers in the industry and their employees have heavily outweighed any advantages which may have been gained from the new open door policies as applied by the ICC.

The Bus Reform Act anticipated some of this destabilization of employment by providing for a right of recall and for preferential consideration of employees terminated as a result of an approved discontinuance or service reduction. The thousands of employees adversely affected in consequence of these new policies are not eligible for the limited benefits prescribed because they have been furloughed rather than terminated.

It is clear on this record that these protections should be extended to any employee adversely affected over a period of time, whether through furlough or termination. Since the principal impact on employment in the bus industry appears to be the result of airline deregulation, eligibility for the protections under the Act should be extended to all terminated or furloughed employees regardless of the regulatory reform causation factor now interposed as a condition to relief.

Given the extraordinary disruption of jobs in the industry as a result of these Acts, it would further appear desirable to enlarge the area of priority of right of hire beyond the current $3 million Class One limitations.

The degree and qualtiy of the protection also merits reexamination to determine more effective means for cushioning the impact of the new laws and for preserving, to the extent possible, the national pool of skilled and experienced operators.

We stand ready at any time to work with the staff in perfecting these various provisions of the Act.

Respectfully,

KENNETH R. MOORE,
Vice President, Director, Bus Department.

Senator DANFORTH. Thank you, sir.

Mr. MOLOFSKY. Mr. Chairman, my name is Robert Molofsky. I am legislative director for the union, and appear here on behalf of the president of the Amalgamated Transit Union, John Rowland.

It is my pleasure to appear on behalf of the organization to provide our views during these oversight hearings on the Bus Regulatory Reform Act.

Mr. Chairman, the ATU represents over 160,000 employees in the urban transit industry. Some 18,000 of these workers are employed directly in the over-the-road bus industry, notably with Greyhound and Trailways, where we have nationwide representation rights and national agreements.

All together, the ATU maintains some 52 locals representing our members in the industry throughout the United States.

My comments will focus primarily on the impact of the act's provisions on the industry's employees. Thousands of long-time industry employees have suffered job losses and other employment dislocations as a result of the Bus Regulatory Reform Act.

From labor's standpoint, Mr. Chairman, the implementation of the act has been devastating. The overall effect has been to destroy long-term career employment, especially among those working for the class 1 carriers. Service cuts and route cancellations made easier by the act's provisions have led to large-scale employment losses on the class 1 carriers.

For those workers still employed, the act's ease of entry provisions have fostered the emergence of many small, nonunion, low-wage rate operators, especially in the charter field, and have led to unfair wage competition. These conditions have severely depressed employee wages and benefits throughout the industry.

Perhaps most damaging of all has been the lack of any meaningful protection in the legislation against long-term job losses due to deregulation. We are compelled to bring these matters to the committee's attention, because they stand in stark contrast to the act's stated goal of "encouraging fair wages and working conditions in the transportation industry," as it otherwise sought to provide improved service to the public.

It is not our intention to repeat our prior testimony stating that in our view the major regulatory changes proposed by the 1982 act were unwise, ill-timed, and ill-designed. What we wish to convey is the different point that as deregulation has played out, the larger carriers have used the revised procedures to strengthen their financial position with route cancellations and rate increases, while falsely touting expanded competition in the industry as the basis for forced reductions in wages and benefits.

In both instances, the act's adverse impacts fall upon the employees who are our members. Recent employment trends in the industry support this observation. For example, ATU membership in the over-the-road industry has fallen from a high of 22,000 in June

1981 to the present level of just under 18,000 in June 1984, a reduction of almost 20 percent.

Our study reveals that in the 2 years since the act's implementation, employment losses have been accelerated at a rate far greater than that experienced during the recession of 1981 and 1982, leading us to conclude that well over 50 percent of the current furloughed work force, totaling some 3,500 employees nationwide among ATU members alone have lost work as a result of deregulation.

What is most devastating is that in city after city, long-term employees with 5, 10, and even 15 or more years of experience have been furloughed with little hope of recall. As a result of route cancellations and service cutbacks in Missouri our active membership is down over 500 employees. In Michigan, our losses are over 300; in Louisiana 500; and in Nebraska over 400.

At the same time as we are experiencing these employment losses, wages and benefit levels in the industry have been sharply decreased. We do not believe that it was the Congress's original intent to place the entire burden of revitalizing needed intercity transit service on the backs of the employees who provided that service, yet that has been the impact.

The existing employee protection provisions set forth in section 27 of the act have provided no relief at all to the many thousands of workers who have seen their jobs vanish and their careers disappear. Almost all of the unionized workers who lose their jobs as a result of deregulation are placed on furlough, and thus rendered ineligible for any preferential rehiring consideration by statutory exemption.

Although the act established a priority of reemployment right for eligible employees, these provisions can never be activated if the furloughed employee still enjoys a right of recall under the applicable collective bargaining agreement.

In addition, the legislation sought to establish a right for terminated employees to be considered for employment by other carriers in the industry seeking new hires. This second right, however, does not guarantee that the employee be hired, but rather that they be given consideration for employment along with other applicants.

Both rights apply only to openings in the employee's occupational specialty, yet this second level of protection, the right of consideration, is also in fact no protection at all, for again employees on furlough with recall rights are denied such consideration.

For others who might qualify, there are burdensome and very difficult regulatory rules that they must comply with.

In sum, Mr. Chairman, under the act, employees on furlough with recall rights under existing labor contracts are ineligible for any protected status and any preference rights, yet most of the employment cutbacks during the last 2 years were by unionized class 1 carriers such as Greyhound and Trailways, whose workers were automatically placed on furlough.

The net result is that these employees thoughout the United States forming the bulk of the unemployed pool for whom the act's protections were designed receive no assistance at all. Their former carriers are not hiring, and there is no obligation placed on outside carriers to employ these individuals.

In our view, Mr. Chairman, Congress's failure to incorporate meaningful protections into the regulatory legislation represents an unjustifiable departure from longstanding Federal policy which for over 50 years has recognized the need to couple meaningful employee protection with regulatory reform.

These protections have been included uniformly in all rail, air, and mass transit regulatory reform. We believe that full employee protections comparable to those in the other transit assistance and reorganization legislation should be incorporated into the Bus Regulatory Reform Act.

We would be pleased to work with the committee and its staff to develop an appropriate employee protection provision which could be inserted into the act as a substitute for the existing standards.

Thank you, Mr. Chairman. We would be happy to answer any questions or comments that you may have.

[The statement follows:]

STATEMENT OF JOHN ROWLAND, PRESIDENT, AMALGAMATED TRANSIT UNION, AFL-CIO

Mr. Chairman and members of the Committee: I am Robert Molofsky, Legislative Director of the Amalgamated Transit Union, AFL-CIO, CLC. It is my pleasure to appear before you today on behalf of our International President John Rowland to present our views at this 2nd Annual Oversight Hearing of your Committee on Bus Regulatory Reform. We appear here today along with the United Transportation Union to present a shared viewpoint which is fully supported by the AFL-CIO.

The ATU represents 160,000 employees in the urban mass transportation industry composed of drivers, mechanics, clerks, baggage handlers, ticket agents and maintenance personnel. Some 18,000 of these workers are employed directly in the over-the-road bus industry, notably with the Greyhound and Trailways Corporations where we have nationwide representation rights and national agreements. Altogether, the ATU maintains 52 locals representing our members in this industry throughout the United States.

Our comments will focus primarily on the impact of the Act's provisions on the industry's employees. Thousands of long time industry employees have suffered job losses and other employment dislocations as a result of the Bus Regulatory Reform Act.

From labor's standpoint, the implementation of the Act has been devastating. The overall effect has been to destroy long-term career employment, especially among those working for the Class 1 carriers.

Service cuts and route cancellations made easier by the Act's provisions have led to large-scale employment losses on the Class 1 carriers. For those workers still employed, the Act's ease of entry provisions have fostered the emergence of many small non-union, low wage rate operators, especially in the charter field and led to unfair wage competition. These conditions have severely depressed employee wages and benefits throughout the industry. Perhaps most damaging of all has been the lack of any meaningful proteciton in the legislation against long-term job losses due to deregulation. We are compelled to bring these matters to the Committee's attention because they stand in stark contrast to the Act's stated goal of "encouraging fair wages and working conditions in the transportation industry", as it otherwise sought to provide improved service to the public.

Two years have passed since enactment of the Bus Regulatory Reform Act. Unfortunately, this period has not witnessed a rejuvenation of the industry envisioned by the Congress and the Bill's advocates. Rather, the record to date is one marked by service reductions, leaving hundreds of communities, often in rural and less populated areas, with little or no regular route service. Inter and intrastate rates have increased placing greater financial burdens on those who most need frequent and inexpensive transit service. Rather than creating a landscape serviced by an ever increasing multitude of carriers competing to provide better and less costly service, we have witnessed a serious retrenchment of operations by the large Class 1 carriers and the concentration of almost all new carrier entry into charter and special service operations rather than regular route services. For example, of the 2,892 entry applications filed with the ICC since the Act's passage, 2,442 or 84% were for inter-

state irregular route service—that is for other than regularly defined point to point service. During the first year along 1,689 charter and special service applications were filed as compared with only 213 for increased regular route service.

Clearly the hoped for advantages of a deregulated industry producing a more competitive, fuel efficient motor bus system aiding the economy and the transit needs of the elderly, handicapped and the poor, have not occurred.

Proponents of deregulation originally argued that an unrestricted marketplace, operating without governmental interference, would enable bus companies to prosper financially and benefit consumers as well. It was anticipated that smaller bus companies would fill the vacuum left when the Class 1 carriers, notably Greyhound and Trailways, abandoned their less profitable routes. This has not occurred. In fact, new entry and service expansion have largely been confined to the most heavily traveled intercity and resort routes.

Mr. Chairman, it is not our intention to repeat our prior testimony stating that in our view the major regulatory changes proposed by the 1982 Act were unwise, ill-timed and ill-designed. What we wish to convey is the different point that, as deregulation has played out, the larger carriers have used the revised procedures to strengthen their financial position with route cancellations and rate increases while falsely touting expanded competition in the industry as a basis for forced reductions in wages and benefits. In both instances, the Act's adverse impact falls upon the employees who are our members.

Recent employment trends in the industry support this observation. For example, an examination of ATU membership in the over-the-road bus industry reveals that employment levels went from a high of 22,300 in June of 1981 to the present level of 17,841 in June of 1984, a reduction of almost 20%. Our study further reveals that in the two years since the Act's implementation, employment losses have been accelerated at a rate far greater than that experienced during the recession of 1981 and 1982, leading us to conclude that well over 50% of the current furloughed work force totaling some 3,300 employees nationwide among ATU members alone have lost work as a result of deregulation. What is most devastating is that in city after city, long-term employees with 5, 10 and even 15 or more years of experience, have been furloughed with little hope of recall as a result of route reductions and service cutbacks.

At the same time, wage and benefit levels in the industry over the last two years have sharply decreased. I am sure you can all recall the lengthy strike forced on the public and its employees by the Greyhound Corporation. This strike in our view was precipitated by the company seeking to take advantage of the harsh anti-union climate fostered by the present Administration. What should be of special concern to this Committee, however, is that Greyhound sought to portray itself as a company on the financial brink and in dire need of concessions to survive in the newly deregulated climate. Yet as cited above, the alleged growth and competition feared by Greyhound has occurred almost exclusively in the charter and special service operations and not in the directly competitive regular route service. Further, while we don't intend to relive the strike here, the Corporation's financial position was far more profit making than it presented in public. Nevertheless, the wage rates and benefits of our over 12,000 Greyhound members were reduced by some 14%. In addition, as a result of deregulation the company was able to drop over 1,300 of its "non-profitable" stops, with the result that over 3,000 employees were furloughed, even prior to the strike. Throughout the industry, first year wage increases negotiated in 1983 for over 15,000 ATU employees under 13 separate contracts averaged only 0.5%. During the first six months of 1984, negotiations in the intercity bus industry, already depressed since the recession and deregulation, produced an actual decrease in wages averaging 3%. Annual increases in the 10 year period from 1972-1982 had averaged 8.3% per year.

In addition, recent decisions by the National Labor Relations Board and the federal courts have abetted the adverse impact of deregulation by enabling unionized Class 1 carriers to spinoff service provided by employees under long-term collective bargaining agreements, and continue to profit from these operations under various kinds of sales, leases or service contracts made with other non-union operators, or even with other unorganized subsidiaries of the same company. The net effect is the same—a loss of jobs among the most long-term skilled employees and a benefit to the profit-making potential of the carriers.

We don't believe that it was the Congress' original intent to place the entire burden of "revitalizing" needed intercity transit service on the backs of the employees who provide that service. Yet that has been the impact.

The existing employee protection provisions set forth in Section 27 of the Act have provided no relief at all to the many thousands of workers who have seen their

jobs vanish and their careers disappear. Almost all of the unionized workers who lose their jobs as a result of deregulation are placed on furlough, and thus rendered ineligible for any preferential rehiring consideration by statutory exemption.

Although the Act established a priority of reemployment right for "eligible" employees, these provisions can never be activated if the furloughed employee still enjoys a right of recall under the applicable collective bargaining contract.

In addition, the legislation sought to establish a right for terminated employees to be "considered" for employment by other carriers in the industry seeking new hires. This second right however, does not guarantee that the employees be hired, but rather, that they be given consideration for employment along with other applicants. Both rights apply only to openings in the employee's occupational specialty.

The second level of protection, the right of consideration is also, in fact, no protection at all. For again, employees on furlough with recall rights are denied such consideration rights. For others who might qualify, existing registration procedures place the entire burden on the employee to notify the ICC of his job loss and specify the specific route reduction or cancellation that led to his effective termination. There is no similar requirement placed on carriers to notify the ICC of the job termination or service discontinuance.

Moreover, the obligation is placed entirely upon the protected employee to notify his former employer that he wishes to be reemployed at anytime the company hires new workers and also to advise other prospective employers of his "protected status" and desire to be considered for any vacancies.

In sum, under the Act, employees on furlough with recall rights under existing labor contracts are ineligible for protected status, and any of the preference rights. Yet most of the employment cutbacks during the last two years were by unionized, Class 1 carriers, i.e., Greyhound and Trailways, whose workers were automatically placed on furlough under existing labor contracts. The net result is that these employees forming the bulk of the unemployed pool for whom the Act's protections were designed, receive no assistance at all; their former carriers are not hiring, and there is no obligation placed on outside carriers to employ these individuals.

This anomalous situation was confirmed by a November 7, 1983 decision of the ICC denying eligibility status to six employees because of their fuloughed position with their home carriers. To date they remain the only six employees who have sought to take advantage of the Act's limited protections.

In our view Mr. Chairman, Congress' failure to incorporate meaninfgul protections into the regulatory legislation represents an unjustifiable departure from longstanding federal policy which for over 50 years has recognized the need to couple meaningful employee protections with regulatory reform. Since the 1930s, railroad employees covered by numerous reform measures affecting mergers, sales, leases, and service reductions have been afforded these fair job and benefit protections. The prototype protections set forth in Section 5(2) of the Interstate Commerce Act of 1940 have been applied, by agreement, decision or legislation to each successive generation of rail regulatory reform, including the most recent Rail Reorganization Acts of 1970, 1973, 1976, 1980 and 1983. The Section 5(2)(f) protections later became the model for protections afforded mass transit employees under Section 13(c) of the Urban Mass Transportation Act of 1964, as amended. It is significant that as that Act was revised and extended over the years in 1974, 1978 and most recently by the Surface Transportation Assistance Act of 1982, these protections have never been removed or altered. Similarly, the Airline Deregulation Act of 1978 was originally passed with protections for industry wide job rights, employment preferences, and compensation guarantees.

We believe that full employee protections comparable to those included in other transportation assistance and reorganization legislation should be incorporated into the Bus Regulatory Reform Act. Failure to so provide will almost certainly leave thousands of additional long-term career employees unemployed and unable to find work in their chosen occupation, thereby placing an unfair burden on them and their families.

We would be pleased to work with the Committee and its staff to develop an appropriate employee protective provision which would be inserted in the Act as a substitute for the existing standards.

Thank you Mr. Chairman. We would be happy at this time to respond to any questions or comments you or other Committee members may have.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR DANFORTH AND THE ANSWERS THERETO

Question. In your view, has the Bus Regulatory Reform Act of 1982 had any positive impact?

Answer. We have maintained since deregulation was first considered, that a regulatory scheme allowing for greater freedom of entry and exit would result in the loss of critical service especially in rural areas, and secondly create unnecessary competition on only the most lucrative of routes. The record since 1982 has confirmed our expectations. Job losses have been significant and competition has increased primarily in the heavily traveled urban and charter/resort routes. We have also been critical of the relaxed entry standards which deemphasize new entrants' financial position and their safety and fitness capacity. We do realize however, that the Act's rate and schedule reforms have aided the economic security of many carriers especially the larger Class 1 operators. Overall, we believe a strengthening of the entry requirements is necessary, emphasizing stronger fitness, insurance and safety standards. Further, as described below, we believe stronger employee protection guarantees are necessary to offset the Act's adverse impact on thousands of long-term industry employees.

Question. You recommend in your testimony that full employee protections comparable to those included in other transportation legislation be incorporated into the Bus Act. What specific types of protection do you believe would be beneficial?

Answer. As presently designed, the employee protection provisons of the Act offer a priority of reemployment right for eligible employees terminated as a result of a Class 1 carrier's service discontinuance or schedule reduction as defined in Section 27(c). The reemployment preference requires an employee's former carrier to rehire the person into his or her occupational speciality at such time as the carrier is hiring additional employees (Section 27(a)). A carrier recalling employees from furlough is not considered to be hiring additional employees. The Act further provides that an employee must be officially terminated from service as a result of an approved discontinuance or service reduction to be eligible for protection. Furloughed employees are exempt from the Act's protections. These same restrictions apply to the second level of protection requiring other Class 1 carriers to extend employment "consideration" to eligible protected employees of another such carrier at the time they are hiring new employees. This second level of protection does not require the outside employer to employ the terminated worker.

As set forth in our testimony, almost all of the 3,500 employees whose jobs have been lost because of these service changes were employed by Class 1 carriers, and covered by collective bargaining agreements under which these workers were put on furlough and thereby rendered ineligible for the Act's limited protections.

The original purpose of the furlough exemption was to avoid any potential conflict with the parties' collective bargaining agreements and the Act's protections, and to avoid placement of individuals with a new carrier only to have the employee exercise a right of recall to his former employer. In practice, however, the layoffs and furloughs caused by the Act's provisions have been long-term. Almost all of the employees placed on furlough have not been recalled. Those few that have been recalled were employed as a result of either a temporary cyclical or seasonal increase in employment levels. In sum, the 3,500 furloughed workers whose jobs have been lost have been denied both the reemployment priority and any right of consideration for hire with other carriers.

We, therefore, propose amending Section 27(a)(1) and (d)(2), to render eligible for the Act's protection, employees on furlough in excess of 6 months, who otherwise meet the Act's requirements. A 6 month waiting period would eliminate the possibility of a recall as a result of seasonal adjustments. An affected employee would in practice be given the option of remaining on the furlough list or accepting a new position and thereby forfeiting his or her recall rights.

Secondly, inasmuch as the overwhelming majority of employees whose jobs have been lost since the Acts passage were employed by the dominant Class 1 carriers, who are not hiring, the existing priority of reemployment right offers no measurable protection for affected employees. Therefore, in order to include meaningful protections for long-term industry workers, we propose that the "second level" of protection, the right of consideration as set forth in Section 27(b) be amended to provide a priority of employment protection guaranteeing qualified and eligible employees the right of hire with outside carriers when filling positions in the employee's occupational specialty.

In addition, while there is some expansion by the Class 1 carriers as a result of turnover and attrition, the major hiring within the industry is by carriers who fall under the Class 1 threshold. Therefore, we further propose eliminating the

$3,000,000 Class 1 threshold for employers and require the application of the priority of hire rights to all carriers operating under ICC approved authority.

These amendments would provide qualified employees with the opportunity to remain in their chosen profession and provide the public with continued skilled service. Eligible workers would be selected from the list of employee names, job skills, and geographic locations, maintained by the ICC and forwarded to the hiring carriers as well as other interested parties upon request.

These amendments are consistent with the priority of employment and reemployment protections provided to rail and other transit industry workers whose jobs have been lost as a result of deregulation, mergers, consolidations or other governmental approved actions.

Finally, we propose for the Committee's consideration amending the employee protection provisions to enable all qualified employees who meet the Act's service requirements and whose employment has been terminated by a motor carrier of passengers other than for cause, to be eligible for the priority employment rights described above, without regard to whether the termination was related to the Act's regulatory scheme. This measure of protection would be available to employees whose jobs have been lost generally for business or other cyclical reasons. Again, our goal is to enable the public to benefit from the skills and qualifications of long-term employees operating within the industry.

We are prepared to meet at the Committee's convenience to discuss these porposals further and to present to the Committee a detailed legislative draft containing our amendments. We have discussed this proposal with the UTU and the AFL-CIO and they are fully supportive of the recommendations contained herein.

Senator DANFORTH. Thank you, Mr. Molofsky. You have made clear what you would like us to do, namely, institute some protection mechanism. What about the other witnesses? What would you like Congress to do?

Ms. PERRY. If you are talking about specific changes in the act, we would request the mandatory insurance requirements immediately. As you know, there were to be $5 million for 16 passengers or more, $1.5 million for 15 passengers or fewer. That has been postponed until October 1985, cut in half. We feel that that should be made mandatory.

Strengthen enforcement of both safety and insurance by ICC and DOT. I do not know if that would require tougher language, or how you would do that legislatively. But we have consistently felt the lack of that enforcement.

Senator DANFORTH. You know that we still hope to get passed in this Congress the bus safety bill.

Ms. PERRY. We hope you do, too; yes.

Senator DANFORTH. In fact, right now we are in intensive negotiations. If you favor that, this is the time to do something about it.

Ms. PERRY. OK. As you know, we have been in favor of it and supportive of it all along. That certainly would be a major step in the right direction. It would be something we would consider very worthwhile. Then the relevant question in the industry, which I kept dancing around in my testimony, of course, concerns the ICC, and what is it becoming, and should it be sunset.

We do not have this answer yet, but it is the question that the industry is asking and that we are all looking at. So I would suspect that would be a subject of future legislation.

Senator DANFORTH. Thank you.

Mr. Moore.

Mr. MOORE. I would support Ms. Perry's comment about the ICC. In fact, it appears that the ICC has no care at all for the riding public. ICC will allow anyone to operate a bus, go into service, and they forget about safety. Even when there is no safety at all.

I do not think that that was the intention of the act, and I know that that is not the requirement of the ICC over the years. They just cover their eyes, close their ears. They have no care whatsoever about the safety or the service.

I want to mention to you that in the State of Kansas, where we represent the Trailways drivers, most of the cities, even the third largest city in Kansas, Hutchinson, KS, there is no bus service at all there since deregulation. The bus service just pulled out by Trailways.

Great Bend, KS, no bus service. Liberal, KS, no bus service. Sterling, KS, no bus service. Lyons, Stafford, Meade, Peabody, Florence, Strong Bend, KS. None of these places have bus service since deregulation went into effect.

Hot Springs, AR, no bus service. We could go on with a long list of places, and again, I think there should be some controls on this entry into the service, and ICC should be made to know that they should be out there to protect some of this.

Senator DANFORTH. Again, this is the bill that is before Congress right now. We hope to get it passed by the Senate maybe today, and then the question is whether the House will take it in conference.

But it does that. It provides for annual inspection, and it provides for safety fitness as a condition of entry.

Mr. MOORE. I would also like to support Mr. Molofsky's comments about the employee protection. The employee protection provision is not working the way it was intended whenever it was put into the bill, because a person practically has to be discharged now before he can be referred to get a job somewhere else, and most of the people are furloughed, so therefore the protection system is just a farce.

Mr. MOLOFSKY. I would stress on that point that in terms of any specific areas of inquiry, eliminating the exemption from any protected status for furloughed employees who in reality have no expectation of being recalled by their former carriers would go a long way toward solving this problem.

The growth has occurred in our view only in the charter and special resort and gambling route type service. It has not expanded in terms of regular route service. So in terms of employee protections there must be provisions enabling employees to go from where their jobs are being lost to where the jobs are being developed, and eliminating this furlough exemption would assist in achieving this measure of protection.

Senator DANFORTH. OK. Thank you all very much.

[Whereupon, at 10:44 a.m., the subcommittee was adjourned, to reconvene upon the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF MATTHEW V. SCOCOZZA, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. Chairman, thank you for inviting the Department to submit a statement for the record discussing the Administration's views on the economic regulation of household goods carriers and motor carriers of passengers.

Although the legislative reforms affecting household goods carriers and buses have been in effect for different lengths of time, the results of reform are very positive. In my statement, I would like to highlight some of the results of reform in both of these segments of the motor carrier industry, beginning with household goods carriers.

HOUSEHOLD GOODS CARRIERS

For 4 years now, household goods carriers have been operating in the more flexible, more competitive environment provided by the reforms incorporated both in the Household Goods Transportation Act of 1980 and in the Motor Carrier Act of 1980. I am pleased to report that, as the Department has testified in previous years, reform is working well in the household goods sector of the trucking industry.

The good news is that carriers have taken advantage of these reforms to provide shippers with new and improved services, as well as to offer more competitive prices. Even through some difficult economic times, the household goods carrier industry was providing better service to its customers than it did during the days of strict, old-fashioned regulation. Many new services, such as binding estimates and guaranteed pickup and delivery, have proven especially popular with consumers. In addition, customer complaint levels have fallen sharply since 1980.

That's the good news. Now for the even better news. Last fall we saw the first glimmer of improvement in the financial and operating results for household goods carriers. This year, I'm delighted to report that a strong economy has resulted in a tremendous improvement in the financial performance of this segment of the trucking industry.

Results for the second quarter of 1984, as compiled by the Household Goods Carriers Bureau, show that the 18 largest carriers experienced a 29.6 percent increase in operating revenues, compared to the second quarter of 1983. Tonnage rose an impressive 17.4 percent, and net carrier quarterly operating income surged from $9.6 million to $21.4 million.

Comparisons between the 12-month periods ending June 30, 1984, and June 30, 1983, also showed substantial improvement. For example, tonnage grew by nearly 13 percent; and operating revenues rose by more than 21 percent. The Bureau also reported that the first 6 months' results for 1984 represented the best such results in the past 5 years. Although only the larger carriers report these data to the Bureau, they are said to account for about 90 percent of overall intercity household goods industry revenues.

Based upon what we've seen so far, 1984 looks like a good year for household goods carriers. Nevertheless, many challenges remain—both for carriers and for government. For carriers, there is the continuing challenge of adjusting to a more competitive, less regulated environment. This evolution can take many different forms for different carriers, but certain issues are likely to confront virtualy all carriers.

For example, a carrier needs to have a firm grip on its costs, both in the sense of knowing what its costs are for the various different types of services and in the sense of keeping them under control, by operating efficiently.

In addition, a carrier needs to be in touch with its customers. As industry members have told us many times, a carrier's reputation is a highly valuable asset; and it's an investment made by giving shippers what they want, at a fair price, and with a clear sense of each party's rights and obligations. Today, more than ever, carriers need to focus on what services the marketplace wants—and those who search out and develop new markets will be rewarded for their efforts.

Similarly, a carrier needs to be in touch with its own future, with what sort of company it's going to be. Many household goods carriers are diversifying into new lines of business, such as warehousing, distribution, or hauling new commodities. Some are becoming part of broader transportation companies. Others are forming new van lines or changing from one van line to another. Wherever a carrier is heading, the need for long run planning has never been more important than it is today.

Nevertheless, the challenges of the future are not just for carriers to face. Government, too, has a very important role to play. Although we think that the Interstate Commerce Commission has implemented both the Motor Carrier act and the Household Goods Transportation Act in a generally pro-competitive manner, the challenges of reform are not yet all behind us. Carriers are still faced with at least a small mountain of paperwork and regulatory burden—and some tell us it's a large mountain.

We have seen no evidence that old-fashioned, detailed regulation of the day-to-day operations of household goods carriers ever provided consumers with better service; and we believe the time has come for this regulatory and paperwork burden to be greatly reduced. The ICC has an excellent opportunity to reduce this burden in its Ex Parte No. MC-19 proceeding, which received public comments last December. We have urged the Commission in this proceeding to take advantage of this opportunity to reduce regulations to the absolute minimum, consistent with adequate protection of consumers.

Vigorous marketplace competition, coupled with good information about a carrier's policies and a clear understanding of both parties' rights and obligations, should provide much better consumer satisfaction than would be produced by the inefficient shackles of detailed regulation. We hope that the Commission will issue a decision soon that is in keeping with these principles.

In summary, we are pleased to report that reform is working well and that household goods carriers are participating strongly in the economy's rebound. We hope that the ICC will soon give these carriers an even greater opportunity to be responsive to consumers' needs, by greatly reducing the paperwork and regulatory burdens they still face.

MOTOR CARRIERS OF PASSENGERS

We have now accumulated nearly two years experience and data under the Bus Regulatory Reform Act (BRRA) of 1982. The industry is still in transition, but generally we can say that the Act is having a positive effect.

ENTRY AND EXIT

With respect to entry and exit from the intercity bus industry, the available data suggest that the initial spurt in service abandonments that we say in the first months under the Act has now abated, and that they are now resuming a rate about equal to or below pre-act levels. Even this much reduced rate should be considered in connection with the fact that some of the route adjustments announced shortly after implementation of the Act are still being made.

Entry, in terms of new service introductions, is occurring where the industry perceives a demand. Of particular interest is the fact that in those states that removed all intrastate regulation before the Act's implementation, and where more time has elapsed to allow the initial adjustment to the freer operating environment, the historic long-term decline of the regular route intercity bus industry appears to have ceased and even, to some extent, been reversed.

ENTRY

By the end of July 1984, there had been approximately 2,500 applications for new operating authority published in the Federal Register or ICC Register. Of these, 293 involved applications for regular route authority to provide service among various communities. An additional 71 applications sought regular route authority to serve more specialized destinations such as airports and recreational communities. Forty-seven applications also sought to remove restrictions against picking up or discharging passengers along existing routes. Regular route applications have been published involving every state in the continental United States, Alaska, and the District of Columbia.

Summary statistics such as these, however, fail to give a full sense of what is actually happening where people travel. Some illustrative examples may help to provide a clearer picture.

A new company has begun operating from Minneapolis, MN, into rural areas of western Wisconsin over a route that had been discontinued by another carrier some time prior to the implementation of the Act. In the same general area a small Wisconsin carrier which entered the Chicago, IL, to Minneapolis, MN, market in competition with a major national carrier approximately two years ago has recently increased both service and routings between those points. This same carrier has recently received authority to operate between Minneapolis, MN, and Kansas City, MO, and initiated service in late August.

Two regional carriers in the South/Southwest have greatly expanded their route structures and are interlining with each other to provide new options for travelers across Texas and Louisiana.

These new service authorities cover many communities, including those with existing service and those with no service or recently discontinued service. In Texas, for example, a number of small communities lost service when a major carrier withdrew and was not immediately replaced. Now those points are being served by a large regional carrier. Recently a national carrier also applied to serve these routes, although it has not yet initiated service.

In the State of Maine, a major carrier abandoned a route between Bangor and Calais, near the Canadian boundary, which served both cross-border traffic with the Maritime provinces and a very low level of intrastate business over a somewhat circuitous local route. After the discontinuance the international service was assumed by a major regional carrier in the Maritimes which now operates over a direct, but relatively unpopulated, route from the border to Bangor. Meanwhile, a new local carrier has begun service with a minivan over the old local route, providing service among the small communities and access to a national carrier at Bangor.

In rural Wisconsin, a small carrier that began operating new and replacement service shortly after the inception of the Act, primarily on a weekend basis, is now operating daily service.

EXIT

Let me now turn to the matter of exit. The late 1982 and 1983 period was characterized by numerous service and route adjustments by the industry in general and a major carrier's announcement of a seemingly large number of service point discontinuances. Both the number and character of the discontinuances announced in the first year of the Act's implementation strongly imply that regulation had been forcing the continuation of some services from which carriers had wanted to withdraw for a long time. Preliminary data indicate, however, that once this pent-up need to exit was satisfied, the overall annual rate of decline in departures returned, in 1983–1984, to slightly less than the average experienced in the eight years prior to enactment of the act. Actual service point discontinuances have remained at slightly above pre-Act averages due, in large part, to delayed effectiveness of discontinuances announced immediately after the Act was passed.

In analyzing these trends, it is important to differentiate between the types of service points abandoned. Many points were carried on carrier schedules for years without any actual traffic having been received or discharged at them. Apparently, these points had been retained in the schedules simply because of the cost and red tape involved in obtaining discontinuance under a particular state regulatory scheme. In many cases service at these points was minimal, often only one trip a day or less. Many such service points were only flag stops or, if shown as a time service point in the schedule, had no station because traffic was very low or nonexistent.

A route discontinuance in Indiana shortly after the implementation of the BRRA exemplifies the situations encountered. In late 1982 a regional carrier discontinued a route between Logansport, IN, and Chicago, IL, that served 18 communities. On paper this might appear to be a major service loss to the area, yet upon closer examination it was found that the route operated only on "the first Tuesday of each month except holidays". In actual practice, a passenger vehicle ran once a month, excepting holidays, from Logansport to Chicago and left Chicago an hour later for the return trip. This route was not being operated to serve a demand for transportation, but existed only as the result of either state regulation or to comply with the pre-BRRA requirements of the ICC for holding what was known as "incidental charter authority." That was the "right to originate charter buses in an area based upon the fact that the company services the area with regular route operations."

Service levels examined in states which had deregulated intrastate passenger transportation prior to implementation of the Act have stabilized and, in fact, are beginning to increase both in departures and points served. Because the number of

these states in small and their circumstances not entirely representative, it would be inappropriate to cite their experience as evidence of a proven trend. However, their experience may suggest that a substantial period of time is needed to eliminate the holdover effects of stringent regulation and to begin developing a bus industry structure responsive to today's needs.

INTERSTATE AND INTRASTATE FARES

Differences between interstate and intrastate fares are gradually being reduced. As a result, the interstate passenger is less and less frequently subsidizing intrastate fares kept artificially low by state regulation. Some differences between interstate and intrastate fares still exist, but they are being noticeably reduced. The impact of regulation on fare levels is evidenced by the fact that, in those states with the strongest tradition, intrastate fares display the greatest disparity with interstate fares.

Head-to-head fare competition is taking place at both the intermodal and intramodal levels. Competitive pricing is becoming more sophisticated as the carriers learn to function in their new environment. Not only are such innovations as time-of-day or peak/off-peak fares being introduced, but also fares are being reduced where competing services are offered. Significant intermodal competition from discount airlines has also arisen recently on a number of routes. And both of the major carriers have filed, for the first time, mileage-based interstate tariffs.

When one looks at the fares actually being paid by travelers, including competitive and promotional fares, one finds that it is possible to ride between many points today for a lower fare than in 1980. When the effects of inflation are taken into account, an even greater proportion of fares are at or below their 1980 level. It now seems clear that stringent regulation was not needed to prevent unwarranted rates increases.

REMOVAL OF ANTITRUST IMMUNITY FOR SINGLE AND JOINT-LINE RATEMAKING

The Bus Regulatory Reform Act of 1982 mandated the elimination of antitrust immunity for collective ratemaking for single-line rates beginning January 1, 1983 and the removal of joint-line collective ratemaking on January 1, 1984. A year and three-quarters after the elimination of collective ratemaking for single-line fares and 9 months after its elimination of collective ratemaking for single-line fares and 9 months after its elimination for joint-line fares, we know of no serious problems arising from the elimination of the antitrust immunity to conduct such discussions. As was the case for the July 1 end to single-line immunity for trucking, the loss of much collective ratemaking immunity for the bus industry seems to have been a "non-event."

IMPACT ON THE ELDERLY AND POOR

Preliminary data from a study of the experience of 12 states[1] indicate that service terminations do not appear to have fallen disproportionately upon the elderly or the poor. In those communities where service was terminated in the 1982–1984 period, the population of elderly was lower, and the average median income was actually higher, as a percentage of the total U.S. population. The Motor Carrier Ratemaking Study Commission has also found that, based on evidence developed during the first year after enactment of the BRRA, the elderly have not been adversely affected.[2]

CONCLUSION

In summary, it appears that, to date, the entry and exit provisions of the Act are working as expected, and permit carriers to adjust their operations to meet actual market place needs. Intrastate and interstate bus service is being preserved where the demand for service exists. Meanwhile, the industry is adapting to the new freedoms of the operating environment.

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[1] These states are Arizona, California, Florida, Indiana, Massachusetts, Missouri, Montana, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota.

[2] "Implementation of the Bus Regulatory Reform Act of 1982: The Impact on Older Americans and the Effect on Interstate Bus Service" at 423–4 (1984).

U.S. DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, DC, October 16, 1984.

Hon. JOHN C. DANFORTH,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: Enclosed are my replies to questions for the record for the Surface Transportation Subcommittee's September 25 hearing on oversight of the Household Goods Transportation Act of 1980 and the Bus Regulatory Reform Act of 1982.

Thank you for inviting me to submit testimony for this hearing. I look forward to working with you on motor carrier regulatory issues.

Sincerely,

MATTHEW V. SCOCOZZA,
Assistant Secretary for Policy and International Affairs.

Enclosure.

Question. In your statement, you note that a strong economy has resulted in a substantial improvement in the financial performance of the household goods sector of the trucking industry. To what extent, if any, do you believe that regulatory reform has played a role in the industry's financial condition?

Answer. Although the total number of houshold relocations per year is largely a function of the overall level of economic activity, I believe that regulatory reform has also had a significant impact on the ability of household goods carriers to improve their financial performance.

The consumer's decision to move is not normally a function of the prices and services offered by household goods carriers. However, the decisions about whether or not to use a carrier and how much of that carrier's services to use *are* related to the price/service mixtures offered by carriers. Hence, as carriers are allowed to offer rates and services that better meet consumers' needs, consumers are less likely to engage in "do-it-yourself" moves for all or part of their possessions.

In addition, reform has offered opportunities for household goods carriers to operate more efficiently, and hence to achieve better profit margins on their traffic. Thus, even if reform generated no additional tonnage, carriers would be able to achieve imporved financial results.

Question. You express in you statement the Department's hope that the Interstate Commerce Commission (ICC) will reduce the paperwork and regulatory burdens still faced by household goods carriers. In what specific areas do you believe the ICC should reduce such burdens on carriers?

Answer. We think that the ICC's general approach—detailed regulation of the day-to-day operations of household goods carriers—is outmoded and burdensome as a whole. Although this type of operational regulation might have been appropriate when there was little opportunity for meaningful competition among movers, it was not a really satisfactory means of protecting consumers even in the days of strict regulation.

Even though we do not consider the ICC's operational regulations for household goods carriers to be an efficient general approach to promoting consumer satisfaction, there are two areas where specific regulations offer some promise of net consumer benefits. The first involves the so-called "110 percent rule", whereby a consumer who receives a non-binding estimate of moving costs can get his or her possessions off the truck by paying no more than 110 percent of the estimate. Any remaining balance due must be paid within thirty days. The second example involves the right of a consumer to witness the weighing of his or her shipment, as well as to request a re-weigh. However, as binding estimates become a more commonly used option, many of the consumer issues of the "old" regulatory regime—such as the need for price certainty and for accurate weighing of individual shipments—should be resolved.

We don't think the ICC ought to be in the business of telling carriers how to operate. Rather, it would be more appropriate for the Commission to formulate regulations that require carriers to disclose relevant information to consumers—so that they can engage in meaningful comparison shopping among carriers with respect to prices and services—and that require carriers to stand behind their promises to consumers. The ICC does not have the resources to monitor every truck, every contract, every consumer complaint. As partial deregulation has demonstrated, the forces of competition are a better spur to good service than old-fashioned, detailed regulation.

We believe that household goods consumer protection regulations should permit excellence, rather than mandate a uniform standard of mediocrity.

Question In your statement you cite examples of new entry into the bus industry, including service to small communities. On balance, do you believe the entry provisions of the Bus Act have had a positive effect or a negative effect on rural areas?

Answer. The net effects of the entry and exit provisions of the Bus Regulatory Reform Act of 1982 on rural intercity bus service are not entirely clear. Data available after about two years' experience indicate that the impact on rural areas to date is positive on balance. A number of facts and trends support this conclusion.

As noted in our statement, between the implementation of the BRRA and the end of July 1984, over 400 applications for regular-route authority had been published. Some 293 of these involved authority to provide service among various communities, as contrasted with other regular-route applications to serve airports and recreational communities such as casino towns.

In the five years prior to the implementation of the BRRA, regular-route applications averaged only 25 percent of the current rate. The new applications encompass over 3,000 points, including existent service points, abandoned points and previously unserved points. However, not all the these points are points are receiving service, since carriers may not yet be serving them.

Preliminary data from a study of 12 sample states, recently conducted for DOT, indicate that although a surge of service reductions and service point abandonments occurred immediately after implementation of the Act, that surge is now complete, and exit is now occurring at rates lower than those experienced before the BRRA. Moreover, the bulk of the abandoned points were receiving minimal service, such as highway stops and less than daily service. One such route ran only the second Tuesday of each month.

Of particular interest, in the rural context, are data currently being further evaluated, indicating that prior to the Act, at least in some states, carriers were forced to abandon whole routes in order to eliminate non-productive service points. Under the BRRA entry-exit provisions, it now appears that selective tailoring of route structures is permitting new entry and retention of service at points where demand exists, while permitting exit from money-losing points.

In the medium to long run, since carriers are abandoning mostly points where little ridership exists, and entering points where, presumably, sufficient demand for service does exist, we believe rural service will have improved.

Question. What is the status of the bus terminal study mandated by the Bus Act? When do you envision this study being submitted to Congress?

Answer. The Bus Terminal Study is now being circulated for final approval within DOT and the ICC. We expect to have OMB clearance and submit the study to the Congress by the end of December.

Question. In your view, do you believe antitrust immunity should be retained for any bus industry collective ratemaking activities?

Answer. As the Department testified before the Motor Carrier Ratemaking Study Commission last year, we do not believe that antitrust immunity should be retained for any bus industry collective ratemaking activities. The Study Commission agreed with this position in its report to the Congress.

Question. In your view, is there any action which Congress should take with respect to bus industry regulation?

Answer. We believe that the Bus Regulatory Reform Act of 1982 is working generally well, and as the Congress intended. Given that the Act has been in effect for less than two years, we think it would be premature to make any additional changes at this time.

STATEMENT OF HON. EDWARD I. KOCH, MAYOR, CITY OF NEW YORK

Thank you for this opportunity to submit comments for inclusion in the record of your oversight hearings on the Bus Regulatory Reform Act of 1982 (Act). My observations will focus on the detrimental impact of the fact growing number of interstate transportation services on already congested New York City (City) streets. These significant problems can be resolved with the relatively minor revisions to the Act that we are proposing.

Motor passenger carrier entry has been liberalized by the Act in order to reduce government regulations and promote competition in the interstate market. While the open highways between cities are capable of and suitable for carrying the competing services of rival bus operators without special public controls, the same does not apply to the streets of cities like New York.

When large numbers of buses operate amidst all other traffic in the congested streets in the center of a large city, stopping at bus stops along the curb to receive and discharge passengers, local government must have an effective means of coordinating such operations.

The following statistics and the attached exhibits may be helpful in illustrating the magnitude of traffic congestion in New York City. As demonstrated by Exhibit I,[1] a photo of Fifth Avenue during the evening rush hour, we are near the limit of the number of buses that can be physically accommodated in Midtown and Downtown Manhattan. Although day time parking has virtually been eliminated on Madison, Fifth, and Sixth Avenues in Midtown, local bus traffic currently moves between 4.6 and 4.9 miles per hour during the peak evening hour. This is not much faster than walking speed, which is 3.0 to 3.5 miles per hour. Bus volumes now exceed 200 per hour on Madison and Fifth Avenues during the peak periods, and 160 per hour on Sixth Avenue. Conditions in Downtown Manhattan are similar. The consequence is that virtually all available curb space is already being used as bus stops, as shown in Exhibit II.

Services authorized by the Interstate Commerce Commission (ICC) constitute a significant and growing percentage of the buses in Manhattan. ICC authorized routes represented only 3% of the total authorized through 1978. But in the interval between 1978 and 1984, ICC authorized operations jumped to 32% of new services. On a typical day in June of this year, a total of 2,991 commuter and charter buses were observed entering Midtown Manhattan. Of this total, 588, or 20%, were operating under ICC authorization.

We are working to maintain mobility and meet federally-mandated air quality standards in New York despite congestion and the constantly increasing volumes of vehicular traffic. The City recognizes the greater efficiency of carrying people on buses rather than in private cars and therefore applies the most advanced traffic techniques to give buses priority over cars. But surveys have revealed that only 10% of riders on new bus routes come out of private cars; the great majority come from existing commuter rail and subway lines, which are already dependent on large subsidies from public agencies at all levels.

ICC authorized services caused particular difficulties for us. The City of New York has found that since the Act became effective, the proliferation of ICC authorized buses and vans on our local streets has severly hampered our ability as a local government to effectively control traffic congestion and environmental pollution. The Act does not empower municipalities to control the routes, bus stops, or layovers of ICC authorized buses in the way we control City and State authorized buses.

All bus lines operating on local streets pursuant to a City franchise or New York State Department of Transportation certificate are required to use bus stops, layovers, and routes that are approved by the City. A bus line risks losing its City franchise or its State certificate if service requirements specified in the franchise or certificate are chronically violated. The threat of loss of operating authority provides a strong incentive to comply with these local requirements. The ability to establish service requirements (bus stops, layovers and routes), and to revoke operating authority where the requirements are not met, enables the City to effectively control the flow of bus traffic.

These controls on buses are among the tools used to reduce traffic congestion and environmental pollution, and to promote safe, adequate, economical, and efficient transportation. From a transportation perspective, they are essential.

These concerns are not new. The Port Authority of New York and New Jersey (Port Authority) is a bi-state agency which was created by an Act of Congress to promote interstate commerce in the port region. One of its earlier projects was the 1950 construction of the Port Authority Bus Terminal to receive buses arriving in New York City directly from New Jersey via the Lincoln Tunnel. In 1963, another off-street bus terminal was constructed by the Port Authority to receive buses entering the City via the George Washington Bridge. Passengers using both of these terminals have convenient bus and subway access to all parts of the City. These terminals service over a thousand buses during the peak hour, buses which would otherwise by clogging our local streets bringing traffic to a standstill.

Although the City is not authorized by the Act to establish service requirements such as bus stops, layovers or routes as part of the ICC application process, the City has issued traffic regulations pursuant to its local police powers, exercising certain traffic controls. The regulations require bus operators to file with the City Department of Transportation any written authorization they obtain from a government

[1] The exhibits were not received.

authority other than the City. The City's Traffic Regulations also require all bus lines to obtain bus stop, route, and layover approval from the City Department of Transportation.

These regulations are often ignored by ICC authorized bus operators. They claim that their ICC grants exempt them from local regulation. Since there is no mechanism for revoking traffic regulations, we must rely on the issuance of tickets as our sole deterrent. This has proven ineffective for several reasons. First, many of the operators that our police apprehend regard the fines as just one of the costs of doing business. The City is unable to raise the fines to a level that would provide a monetary disincentive since State law specifies the maximum fine that may be imposed. Second, when operators contest a traffic ticket, it is unclear to State Administrative Law Judges as to how to interpret the City's Traffic Regulations in light of the Act. Finally, based upon a request from the City, the ICC advised that it is unable to supply a complete list of operators providing regular-route service into or through New York City.

Seeking to create an incentive for interstate bus lines to comply with local regulation, and to obtain clarification of certain provisions in the Act, I initiated correspondence with ICC Chairman Reese Taylor, Jr. Copies of this correspondence are appended to this submission.

In a letter of January 24, 1984, I asked the ICC to provide in its grant of authority notice that all carriers must comply with local regulations applicable to the operation of buses. I further asked whether bus stop, layover, and routing requirements could be included in the ICC certification. Such designations could be made as part of the ICC application process and by the mutual consent of the ICC and the City. A similar process is provided under State law with regard to grants of intrastate operating authority by the State Department of Transportation. The ICC responded by letter of February 24, 1984 as follows:

This Commission is not in a position to duplicate, ratify, or enforce the police power which is properly in the hands of the State and local governmnets, nor to try to solve specific local problems. It would be unnecessary—and probably counterproductive—for the Commission to incorporate local regulations into operating certificates, and such an attempt would be of questionable legality with respect to certificates already issued. The Commission has historically declined to exercise control over details of operations within municipalities, except to the extent that specifications of particular streets within cities may be needed to describe adequately the service authorized.

In a subsequent letter of August 22, 1984, the ICC further advised that, as a matter of policy, the ICC would not impose route restrictions unless the applicant seeks authority over specific streets.

When asked whether the repeated violation of certain of the City's Traffic Regulations would constitute grounds for revocation of ICC operating authority, the ICC responded in its letter of August 22nd as follows:

The Commission has no jurisdiction over valid traffic regulations implemented by local governments under their police powers. Under established Federal-State presumption principles, they are outside the Federal domain. Enforcement of local traffic regulations is the responsibility of the jurisdiction which establishes them. Violations are not applicable to operations under our jurisdiction, unless in a particular case they were shown to affect matters within our control. Where a carrier is believed to be operating unlawfully under a Commission authority, a complaint may be filed and enforcement sought of those governing regulations. Such action could result in a revocation of an operating right.

I believe that the cooperation that we have requested of the ICC would not be counterproductive, as the ICC claimed in its February 24, 1984 letter. The establishment of reasonable traffic requirements by the City is necessary if the City is to effectively combat traffic congestion and environmental problems caused by bus traffic. Experience has shown that, equally essential, is the establishment of strong incentives to comply, such as by making a grant of authority contingent upon compliance.

Provided below are amendments that we suggest be made in the Act to assist municipalities in regulating traffic on their streets.

EXPAND PUBLIC INTEREST TEST TO INCLUDE TRAFFIC AND ENVIRONMENTAL IMPACTS

The Act provides that applications for authority to perform regular-route operations may be opposed on the grounds that it is not consistent with the public interest. The public interest test, however, does not provide for consideration of traffic congestion or environmental pollution problems.

We believe that congestion, pollution, and community impacts should be considered as major factors in evaluating a request for operating authority. The ICC should be authorized to balance the needs of prospective passengers against environmental consequences. To ignore these impacts is in conflict with the Federal Clean Air Act of 1970, as amended, requiring cities to maintain certain air quality standards. Since cities must abide by all federal requirements, it is imperative that federal agencies acknowledge and act consistently with requirements imposed by other Acts of Congress.

New York City has no desire to infringe upon the ICC's function of determining operating authority. But we strongly feel that the ICC should be required to take local conditions into account in determining whether authority will be granted. So that these impacts may be brought to the attention of the ICC, we believe that a municipality should, as a right, have the ability to comment upon applications and to participate in hearings in which it has an interest. (Sections 1160 and 1168.4 of the ICC regulations provide that unless a carrier protests on the grounds of adverse effects of a grant, it is within the ICC's discretion to deny the right to participate.)

In those instances where operating authority is granted, the certificate should be conditioned on the applicant's obtaining approvals from a municipality for bus routes, stops, and layover areas. This process would be done expeditiously to ensure that the applicant may begin service promptly. In addition, the municipality should have the ability to require buses to use an off-street terminal facility where such is available. These measures would enable the municipality to more effectively control bus traffic without interfering with the purposes of the Act.

The service requirements specified by the municipality should be included in the certificate. The ICC should be required to revoke the certificate at the request of the municipality where there is a chronic violation of these requirements.

BROADEN DEFINITION OF FIT, WILLING AND ABLE

Regular-route operators need show only that they are fit, willing and able to obtain operating authority. Absent a protest, these are the only factors that the Commission may evaluate in determining whether to grant a passenger carrier application. The Commission has ruled that fit, willing and able means "safety fitness and proof of insurance pursuant to the minimum financial responsibility requirements of Section 18 of the Bus Act . . . An applicant's fitness, as well as its willingness and ability to provide the transportation and to comply with the statute and Commission regulations, will not be examined except with respect to safety and insurance responsibilities. (See Ex Part No. 55 (Sub-No. 56), Application—Operating Authority—Mot. Pas. Car., 133 M.C.C. 62 (1982).)" The definition of fitness should be broadened to allow consideration of violations of other requirements of the Act, Commission rules and regulations, the Criminal Code, and State or local law.

GIVE ICC AUTHORITY TO DENY APPLICATION ON ITS OWN MOTION

Under the procedures established by the Act, such national transportation policy priorities as the promotion of safe, adequate, economical, and efficient transportation may never be taken into account by the ICC on their own accord. The Act should be amended to give the ICC authority to deny an application on its own motion if it determines that the application is inconsistent with the transportation policy or other public interest factors.

CHANGE DEFINITION OF "COMMUTER BUS OPERATIONS"

The Act provides that applications for authority to perform regular-route operations may be opposed on the grounds that the transportation to be authorized will directly compete with a commuter bus operation and would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed. This basis for protest may be used only by carriers providing commuter services by *bus*, using reduced-fare, multiple-ride, or commutation tickets during morning and evening peak period operation.

Few, if any, New York City commuter bus services use reduced-fare, multiple-ride or commutation tickets and therefore do not qualify to participate in the proceedings. Further, our commuter rail services and subways, which provide much of New York City's commuter service and are subsidized by public agencies on all levels, are also excluded. Additional operating subsidies will be required as their ridership is eroded by new bus services.

The Act should be amended to allow the operator of any commuter service—bus, subway, or rail—to protest if a new service would be in direct competition. Further-

more, the requirement of reduced-fare, multiple-ride, or commutation tickets should be eliminated.

VAN EXEMPTION SHOULD BE OMITTED

Under current federal law (49 USC 10526), the operator of a vehicle carrying not more than 15 individuals in a single, daily roundtrip to commute to and from work is not required to receive ICC authorization as a prerequisite to operating. There are a large number of for-hire van services which operate between New York City and New Jersey several times a day who operate without ICC authority although they do not meet the requirements for the exemption, i.e., they provide more than one roundtrip per day.

The exemption for single, daily round trips creates an enforcement nightmare with very few, if any, benefits. Consequently, we believe that the exemption shall be eliminated. In the alternative, at a minimum, more investigators than the current twenty employed by the ICC's Regional Office of Consumer Compliance in New York City, is needed to keep unauthorized van operators in check.

GIVE MUNICIPALITIES JURISDICTION OVER PSEUDO-INTERSTATE OPERATIONS

There has been a proliferation of buses and vans who gain ICC juridiction by following routes that take them outside the State through New Jersey or Connecticut for a short distance merely to avoid local and/or State jurisdiction. Many of these carriers operate from point to point within the City. Their service does not provide any identifiable interstate service. The Act should be amended to disqualify these buses and vans as ICC carriers and to give the applicable locality jurisdiction over them.

SUMMATION

In summary, we believe that relatively minor changes in the ICC Act and administrative procedures would strengthen the ability of localities to deal with the burdens imposed upon them by the growing numbers of interstate buses without compromising the general intent of the Act to ease entry into the market. We ask that the Act and the ICC procedures be revised as follows:

First, the traffic and environmental impacts that an applicant's proposed service would have upon a local area should be included among the factors that the ICC is required to consider in its approval process.

Second, the applicant should be required to notify New York City and existing publicly subsidized carriers servicing the same area of its application for a bus route through or within the City, and the City should be provided an opportunity to comment.

Third, the Act should be amended to provide operators of commuter rail services and subways with the same grounds for protest as that of commuter bus services. The requirement of reduced-fare, multiple-ride or commutation tickets should be eliminated from the definition of commuter bus service.

Fourth, the ICC should be given the authority to deny any application on its own motion on public interest grounds.

Fifth, if an application with a route through or within New York City is approved, the City should be notified and provided the opportunity to designate routes, stops, layover areas, and terminals for the portion of the route within its jurisdiction. These service requirements should be included within the ICC's certificate granting authority. Such a procedure has recently been established for routes within New York City authorized by the New York State Department of Transportation.

Sixth, the ICC should be required to revoke the certificates of chronic violators of local traffic regulations and other applicable laws at the request of a locality.

Seventh, the definition of fit, willing and able should be broadened to include willingness to comply with the Act, the ICC regulations and applicable provisions of the Criminal Code, and State and local law.

Eighth, the exemption for vans providing a single-round trip daily should be eliminated.

Ninth, the Act should be amended to disqualify from ICC jurisdiction buses and vans that are providing an intracity or interstate service but whose routes traverse a portion of an adjacent state. Jurisdiction should instead be given to the applicable locality.

My final recommendation is that the Act should be amended to require that the procedures that apply to applications for regular-route service should be applied to

applications for charter or special services that will be operating primarily along the same streets with the same stops every day. They produce the same traffic impacts as regular-route services and should be required to meet the same requirements. Currently, these applications may be opposed solely on "fitness only" grounds.

I urge the Congress and the ICC to take action on these recommendations. These measures will help the City strike a balance between the regulation of traffic on our streets and the promotion of competition in interstate commerce. New York City will be glad to cooperate with you in drafting the amendments we have suggested.

Thank you.

STATEMENT OF UNITED BUS OWNERS OF AMERICA

Mr. Chairman, my name is Paul Nagle. I am assistant to the executive director of the United Bus Owners of America, the largest trade association to serve the intercity city bus industry, 2,000 operators of regular routes and providers or charter or special tranportation. We also enroll coach manufacturers and other suppliers to the industry. Our constituency includes both Greyhound and Trailways, as well as a number of their affiliated carriers. Predominantly, our membership is made up of moderately sized to small companies. Indeed, approximately 500 members operate five or fewer than five coaches.

The consensus of our membership, without regard to corporate size, is one of support for Public Law 97-261, the Bus Regulatory Reform Act of 1982, commonly called BRRA or the Bus Act. Accordingly, UBOA sees no reason to depart from our declaration, before this body, one year ago. We said then that we believe Congress, in approving BRRA: "enacted a very useful piece of legislation. Any problems we have experienced are with the law's implementation, rather than with its content."

Most commonly, there have been two areas of apprehension in regard to the impacts of the Bus Act. One concern, mainly outside the bus industry, has gone to the hazards of mass abandonments and steep rate rises in regular route service. Secondly, among bus owners, trepidations swirled around the prospects that hordes of unkempt companies would take possession of the highways; that legitimacy would be crushed.

In the considered judgment of UBOA, the mass exit—steep rate rise syndrome never manifested itself; proved to be illusory; is seen to have been a specter, not a reality. UBOA associates itself with the testimony of Greyhound Lines, notably in the remarks of Senior Vice President William L. McCracken, who declared to this Committee.

With many of the adjustments to carrier operators permitted by the Bus Act having been accomplished in the first year, the second year has been characterized by more moderate resort to the relaxed regulatory scheme of the Bus Act. The second year has seen a dramatic decline in discontinuance requests by carriers which confirms the opinion that the exit requests by carriers in the first year was a one-time event. As intrastate rates have approached the interstate level there has been a lessening in intrastate rate activity. And during the second year there was no resort by the industry to a general rate increase. At the same time opposition to deregulation has been transferred from the media to the more dispassionate arena of the courts of appeal. And in the past year we have seen the development of a substantial body of research and analysis vindicating the judgement of those who created and enacted the Bus Act.

Concerning the second set of fears, our conclusions are less sanguine. Awards of fitness authority have been made to unfit applicants. But UBOA does not despair. On the one hand, we perceive that remedies are readily available. On the other hand, we pronounce the overall quality of charter and tour service to have risen to a level beyond anything that seemed probable, not many months ago, when the economy began to contract.

Chairman Taylor and the three commissioners made it plain that the Bus Regulatory Reform Act (BRRA) has removed any conceivable justification for transporting passengers without authorization. It was clear that ICC is not going to go out of its way to impose penalties; that, rather, its angle will be to induce regulatory compliance, or to have offenders clear the road for others who will comply.

In the period since July 17, UBOA has seen no evidence that there will, indeed, be an upgrading of enforcement of ICC regulatory requirements in the passenger transportation industry.

A case in point: On August 30, 1984, President Reagan extended for two years the moratorium on awards of operating authority to applicants owned by Mexicans, or controlled by persons domiciled in that country.

UBOA is concerned over ICC's level of enforcement of that moratorium. True, the Commission has denied applications from carriers who cannot affirm their freedom from Mexican control or ownership. On the other hand, ICC has approved a grant of emergency temporary authority to International Tour Service, of whose three equal partners, one is a Mexican citizen. The Commission's "Division 1" found that the third partner does not appear to own or control the applicant: that an in-depth review of the matter would occur, should the applicant request extension or conversion of the authority. UBOA offers the hope that this Committee wil! undertake to ensure that ICC is made aware of the extent to which it is perceived that the subject grant of authority violates the letter or the spirit of the moratorium, or both.

More substantially, Mr. Chairman, prior to the extension, UBOA had been in regular contact with the Office of the U.S. Trade Representative, urging that the moratorium be extended, and that it be expanded. Specifically, we laid before the Trade Representative, material purporting to show that Mexico has been using transborder commercial zones as open doors to the Stateside commerce.

On August 28, in a letter to the Trade Representative, William E. Brock, UBOA wrote:

If ICC were to trace the routes followed by Mexican coaches at the Louisiana World Exposition, (we) feel certain it would be demonstrated that entry was gained through a commercial zone, such as that at McAllen . . . Contrary to the original premise that to create exemptions for commercial zones is to facilitate commerce, the zones on the Mexican border actually constitute an intolerable burden on interstate commerce, and should have their exemptions withdrawn.

Although the memorandum extending the moratorium does not implement our suggestion, we hope this committe will discuss with ICC the validity of our proposal.

ICC has functioned in such fashion as to indicate that its powers have been nullified by the commercial zone concept. No attention has been shown to trans-zone intrusions by Mexican carriers. Federal Highway Administration (FHWA), on the other hand, has served notice that Mexicans crossing the border into McAllen, Texas, will be required to demonstrate that their vans are insured. Robert Farris is president of Valley Transit Company, a carrier performing regular route service into Mexico under "grandfather rights." Mr. Farris says FHWA's action has been effective; that the illegals are obliged to operate in private cars, with a consequent reduction in the number of passengers being transported.

To follow through on the quotation from our letter to the Trade Representative, UBOA has maintained surveillance over bus traffic at the Louisiana World Exposition. Surveillance has not been continuous, but it has been conducted, sequentially, at week-long intervals by five of our safety inspectors. UBOA patrol cars have been conspicuous in parking areas at the Exposition, and our inspectors have cooperated inconspicuously with agents of ICC or other enforcement bodies. They have reported to UBOA, and without identification of persons or dates, UBOA, in turn has notified ICC's Office of Compliance and Consumer Assistance (OCCA) that surveillance over illegal Mexicans should be invigorated.

During the week preceding September 16, a holiday marking the start of the Mexican Revolution, UBOA urged OCCA to assign an agent to Las Vegas, a location we had been told would exert a strongly magnetic force on holidaying Mexicans, most of whom would be carried in illegal and uninsured buses. No substantive response was demonstrated by ICC, but we did obtain assurances that the Nevada Highway Patrol would be on the alert.

UBOA patrol cars are on constant alert. Although the predominant activity of our six inspectors is to assist members in achieving compliance with all appropriate safety standards and operating requirements, they also submit road reports on bus movements. For this Committee, let it be suggested that, in your future commutation trips, or in highway travel, you observe for yourselves, the numbers of unmarked buses; how many buses bear no evidence of ICC certification; how many appear not to be roadworthy.

UBOA associates itself with the declaration of ICC Chairman Taylor that, in the context of BRRA, there is no justification for operation of any highway coach that is not properly certificated both in regard to entitlement to common carriage, and to compliance with safety requirements.

As we did, last year, UBOA urges, again, that ICC be called upon to be more incisive in its fitness determinations; that it require more than affirmation of compliance; that it insist, upon presentation of an application, that the applicant present evidence to show what has been done to achieve compliance. UBOA finds itself

unable to comprehend that ICC neglects complacently to require fitness applicants to come forward with fitness evidence going beyond a mere affirmation of faith. We advocate that ICC post on its premises, the notice "In God we trust, all others pay cash;" that applicants be called upon to put their money where their mouths are; that they give material evidence of fitness compliance.

Mr. Chairman, support for Chairman Taylor has come from UBOA in a far greater degree than that accorded his predecessors. Nevertheless, we find nothing in the record to indicate that the Bus Act is being administered (let alone enforced) properly. We have hung eagerly upon phrasing of ICC testimony at previous oversight hearings; at hearings on S. 2174, the Highway Safety Act; at confirmation hearings for persons nominated to seats on the Commission; and at public meetings in the Commission.

Our anticipation has gone unrewarded. There is positively no indication that ICC intends, affirmatively to pursue the authority conveyed explicitly in the Commerce Clause of the Constitution. Nor has there been any apparent endeavor by ICC to move forward, constructively, with the powers vested by the Bus Act in the Commission. Accordingly, it is proposed to this Committee, that you recognize the futility of the exercise in which you are engaged; that you take notice of the reality that there has been no effective implementation of the enforcement provisions of the Bus Act; that, as noted in our quotation from the statement of Greyhound's William McCracken, implementation of the Bus Act with regard to regular route operations has become moot; that "the exit requests of carriers in the first-year was a one-time event;" that there has been no materialization of the fears of sky-rocketing rates; that, accordingly, the Commission should be consigned to oblivion; or that, conversely, a fresh and unmistakable charge should be laid upon the Commission; that it should have a fixed period of time to achieve the goals of that fresh and unmistakable charge; that, failing such achievement, "sunset" legislation should be made this body's principal procedural concern.

Mr. Chairman, UBOA appreciates the opportunity to have appeared before you, today, and to have presented, what it is hoped will be useful views on the status of the Bus Act; the proper future status of the Interstate Commerce Commission.

UNITED BUS OWNERS OF AMERICA,
Washington, DC, October 18, 1984.

Hon. JOHN C. DANFORTH,
Chairman, Subcommittee on Surface Transportation, Senate Committee on Commerce, Science, and Transportation, Washington, DC.

DEAR MR. CHAIRMAN: United Bus Owners of America is pleased to respond to your letter of October 3, requesting our views on two items relevant to Oversight of the Bus Regulatory Reform Act of 1982 (BRRA).

Before dealing substantively with the issues, please accept our hearty commendations on the manner in which you shepherded to enactment the bill which began its most recent legislative life as S. 2174. Attached to this letter is a brief commentary which was sent to our general membership on the day following final Senate action. We are profuse in our praise of the support you received from both Karen Borlaug Phillips and from Linda Morgan. It was a rare, indeed a unique, experience to watch the bi-partisan effort which made enactment possible.

Now to the questions:

Question. In UBOA's view, what has been the biggest benefit to date resulting from the 1982 Bus Act?

Answer. UBOA perceives that there are two benefits, both of them economic.

(A) the bus industry is the healthiest it has ever been. There is a profusion of new and upgraded equipment. Buses have incorporated luxuries and amenities which were rare in the pre-BRRA era. The improvements are a direct reflection of BRRA's vast improvement in the atmosphere of the bus industry.

(B) Significant economies have been achieved both at the private and governmental levels. The fitness only concept has removed huge amounts of slack from the system. Wheelspinning has been reduced both for applicants and for bureaucrats. When UBOA testified on October 3 on amortization of investments in operating authority, doing so before the Ways and Means Committee of the House of Representatives, we said it was a pleasure to advocate enactment of a bill which had already paid for itself. The only group which has been disadvantaged by BRRA is the lawyer class which has been obliged to seek sources of income more innovative than preparation by rote of protests and support statements.

Question. What does UBOA think ICC should do to strengthen its enforcement program?

Answer. Your success in securing enactment of the Highway Safety Act will oblige ICC to activate systems more innovative than to require from applicants,

simple affirmations of faith in the efficacy of safety regulations. The inspection requirements of you legislation will surely set the stage for requiring that applicants demonstrate actual safety fitness. We applaud your legislative language on "continuing requirements to prove safety fitness."

STATEMENT OF WILLIAM L. MCCRACKEN, SENIOR VICE PRESIDENT AND ASSISTANT TO THE CHAIRMAN, GREYHOUND LINES, INC.

Mr. Chairman and members of the subcommittee: I am William L. McCracken, senior vice prisident and assistant to the chairman of the board of Greyhound Lines, Inc.

We appreciate your invitation to offer our views at this second annual oversight hearing on the Bus Regulatory Reform Act of 1982 ("Bus Act").

INTRODUCTION

The first year under the Bus Act was a period of observable change of some magnitude. The relaxed regulatory scheme established by the Bus Act prompted numerous new carriers to enter the market place: existing carriers to expand operations; prices to increase on losing operations previously subsidized by other operations; and services to be discontinued which could not produce revenues even approaching carrier costs. In each instance these products of deregulation were expected; were viewed generally as the natural consequences of the substitution of market forces for strict entry, exit and price regulation; and were seen as benefiting a financially ailing bus industry and its customers.

The first year also produces extensive media coverage with emphasis on service reductions and discontinuances. Media coverage frequently was misleading in that it overstated the magnitude of the reductions and ignored the minimal or non-existent usage of the service.

With many of the adjustments to carrier operations permitted by the bus act having been accomplished in the first year, the second year has been characterized by more moderate resort to the relaxed regulatory scheme of the Bus Act. The second year has seen a dramatic decline in discontinuance requests by carriers which confirms the opinion that the exit requests of carriers in the first year was a one-time event. As intrastate rates have approached the interstate level there has been a lessening in intrastate rate activity. And during the second year there was no resort by the industry to a general rate increase. At the same opposition to deregulation has been transferred from the media to the more dispassionate arena of the courts of appeal. And in the past year we have seen the development of a substantial body of research and analysis vindicating the judgment of those who created and enacted the Bus Act.

STUDIES OF THE IMPACT OF BUS DEREGULATION

During the Bus Act's second year several studies have been concluded which provide unbiased analysis of the results of the Bus Act: dispel misconceptions concerning the impact of the Bus Act: and confirm the desirability and need for deregulation.

"The Intercity Bus Industry", Interstate Commerce Commission, Office of Transportation Analysis, January 1984. This study is a comprehensive report on the status of the intercity bus industry and the initial impact of the Bus Act.

The Commission concluded that the Bus Act:

". . . is working. Actual and potential competition rather than regulatory decree are slowly becoming the primary determinants of fare and service levels in the industry. After decades of restrictive regulation, existing firms are moving to rationalize route structures and to seek out profitable opportunities and new (small) firms are entering the industry at a significant pace". (pp. ix-x) (parenthesis in original).

On other important issues the ICC study concluded:

The Bus Act's exit freedoms permitted carriers to continue and accelerate a trend in discontinuances which had been underway for 15 years. (p. ix)

Recent discontinuances were generally expected and intended results of the Bus Act. (p. ix)

The bus industry has not participated in the significant growth in intercity travel since 1950 and in fact has lost market share to airlines. (p. 25)

Congress correctly concluded, in enacting the Bus Act, that significant scale economics and other non-regulatory entry barriers do not exist for buses. (p. 43)

MOTOR CARRIER RATEMAKING STUDY COMMISSION REPORT TO THE PRESIDENT AND CONGRESS, MAY 15, 1984

The Bus Act directed the Motor Carrier Ratemaking Study Commission (M.C.R.S.C.) to determine:

1. The need, if any, to preserve antitrust immunity for collective ratemaking; and,

2. The impact of the Bus Act on persons ove the age of 60, especially those residing in rural areas and small communities, and on the continuation and development of high quality intrastate bus service.

With respect to ratemaking in the intercity bus industry, the report of the M.C.R.S.C. contains what is by far the most complete and accurate review we have ever seen. In exhaustive detail the report reviews the industry structure, competition, financial results, the rate bureau, the mechanics of ratemaking, existing tariff structure, mechanics of fare creation and quotation, and the impact of existing collective ratemaking on fare structures and fare levels.

We at Greyhound Lines, Inc. agree with the M.C.R.S.C. that antitrust immunity for collective ratemaking should end on January 1, 1986, part one of the report clearly stands as the definitive work on intercity bus ratemaking.

With respect to the part two issues the M.C.R.S.C. unanimously found: (p. x)

1. The evidence clearly shows that implementation of the Bus Regulatory Reform Act has significantly benefited the vast majority of bus riders.

2. Most communities losing bus service will not be adversely affected to any great degree, because the data show the persons residing in those communities, including older Americans, have not intensively used the available sevices.

3. The needs of the relatively few persons who may be adversely affected by the loss of bus service including older Americans, can be met by the utilization of Federal, State, and local transportation resources.

To support those findings the report provides a wealth of data on the demographics of bus riders, the impact of service discontinuances, new entry and fare changes, and the alternatives available for communities losing service.

The impact of the Bus Act on older Americans received extensive treatment in the report. While this age group is a constituency of intercity bus, the report concluded that its unmet transportation needs were for local service, ie., not service provided by intercity bus (p. 277-278). Conversely, the preponderance of older Americans will benefit from additional competition on many routes and in the charter market, as well as lower fares. (p. 336)

While the study of the impact of the Bus Act on older Americans was prompted by a concern that such citizens might be somewhat captive to the bus industry the facts show the contrary. One need only travel by air and rail to see that senior citizens avail themselves of those modes with ever greater frequency. And the services air and rail offer that bus doesn't—on-board personnel and floor level entry—clearly are attractive amenities for older Americans. The competitive prices of air and rail carriers also eliminate any advantage that bus may have had in an earlier era. The mere fact that rail and the air industry, like bus, have designed programs and services to attract senior citizens should put to rest the illusion that this age group is the captive of any mode. In fact research shows that the percentage of our passengers in the senior citizen category is less than the percentage of seniors in the total population. In this regard the January 1984 Interstate Commerce Commission study found that the bus industry believed older Americans to be price sensitive and divertable to other modes and thus offered them special discounts even when intramodal bus competition did not exist.

The M.C.R.S.C. also addressed service discontinuances and reached four salient conclusions. First, intercity bus service is not nearly so prevalent as commonly thought, especially in small communities and rural areas. Second, the number of places served by intercity buses has been on the decline for years. Third, much of rural and small town America has gone without intercity bus service in the past. (p. 317) and lastly, most points abandoned had a very low level of service. (p. 321)

The M.C.R.S.C. studies the impact on small communities of relaxed entry standards. The report notes that those opposing relaxed entry contend that small community service will suffer because former monopoly routes, now subject to competition, can no longer subsidize them. The M.C.R.S.C. concluded that there was no evidence to support the position that small community service has been or will be jeopardized by the entry of additional competitors. (p. 331)

THE NEED FOR TOTAL DEREGULATION

During our testimony at last year's oversight hearing we endorsed the proposition that the end of all Federal and State economic regulation was the next logical step. The events of the second year reinforce the appropriateness of "sunset".

Two years experience under the Bus Act prompts the obvious question—does the regulatory scheme created by the Bus Act best serve the public interest, or would the public interest and the national transportation policy be better served by reducing further the displacement of market place merchanisms by Government regulation?

The Bus Act was a dramatic change in regulation. It was enacted at a time when regulation was in disarray. Administrative deregulation of entry at the Federal level, when coupled with stringent price and exit regulation at the State level, was sapping the bus industry of financial vitality and significantly hindering its ability to meet competitive thrusts both inter and intramodal. The Bus Act relaxed entry, exit and price regulation at both the Federal and State level and coincidentally restored a balance in the degree of regulation over these areas. The latter was of critical importance because an equitable and fair scheme of regulation must embrace an equivalency in the degree of regulation over entry, exit and pricing. These three elements are the cornerstone of economic regulation and like a three legged stool each element must be in balance. If not, the stool, or regulation as we knew it in the late 70's and early 80's, collapses. It no longer serves the purpose for which it was designed.

The Bus Act represented a quantum change in a regulatory environment which had remained virtually unchanged for 45 years. While some called for greater change—for the end of all economic regulation—the Bus Act represented a consensus among the various interests. And quite frankly a fear of the unknown world of deregulation established boundaries beyond which consensus could not be achieved.

Now, two years later, that fear has been dissipated. The studies of the Interstate Commerce Commission and the Motor Carrier Rate Making Study Commission pronounce the Bus Act a success and put to rest the fears that harm would befall small communities, older Americans and small carriers. In fact carriers that opposed deregulation are now in the forefront of these exercising the new freedoms. And the largest organization of bus operators, the United States Owners of America, earlier this year issued a strong call for the elimination of remaining controls on entry, exit and pricing.

Much ground has been covered in two years. The Bus Act has served a valuable and necessary purpose. It has provided the experience necessary to show that the remaining economic controls can be safely removed. The Bus Act can only be viewed as a transitory stage in the evolution of deregulation. It can not be viewed as a long term regulatory scheme serving the public interest, because quite simply regulation today has evolved into a ministerial function. The outcome of a request for operating authority, route abandonment, or price change is now a virtual certainty. But first time must pass for processing of the request and the process can still take up to a year. The carrier is paralyzed and frozen in a dynamic marketplace where intermodal competitors make daily changes. A bus company cannot raise or lower a price, inaugurate a new route, or stop the losses on an unused route until the regulatory process runs its course.

How certain is the outcome of these frequently time consuming, costly, and paper generating proceedings? In the entry area the ICC processed 2,435 applications for authority under the Bus Act through June 1, 1984. Of these only 124 were protested (generally involving disputes among carriers operating in northern New Jersey and the New York City area). This is a 5 percent protest rate, a dramatic decline from pre-Bus Act days and a clear indication that carriers no longer view new competitors as impairing their operations.

Of additional significance is the fact that of the 2,651 applications apparently only 3 have been denied. Two were denied because of ownership by a Mexican national, which is prohibited by a two year statutory moratorium. One was denied on public interest grounds after a protest was filed and the applicant made no credible effort to respond to the protest.

In both the rate increase and exit areas virtually every adverse State action appealed to the ICC has been decided in favor of the carrier. Unfortunately the final ICC action comes 6 months to a year or more after the carrier originally applied to the State agency. And only one State, Missouri, has complied with the congressional direction in section 17 of the Bus Act to conform its rate procedures with those of the I.C.C. The hodgepodge of State procedures will remain until Congress acts.

We suggest that the first session of the 99th Congress would be an appropriate time to consider legislation "sunsetting" economic regulation of the intercity bus industry by both the ICC and the State regulatory agencies. The emotional adjustments to the Bus Act are behind us and it should be possible to rationally discuss the various matters "sunset" entaiis.

Without being all-encompassing, we see the broad framework of "sunset" including the following:

1. ICC regulation in all particulars terminating 6 months after enactment of "sunset" legislation.
2. Carriers desiring to operate in interstate and foreign commerce and intrastate commerce obtain a certificate of fitness from U.S. Department of Transportation. This certificate would not be route or area specific, but would allow operations between any points in the United States.
3. State transportation regulation to be totally preempted if carrier holds a U.S. DOT certificate of fitness (same preemption method as in airline deregulation).
4. Safety and insurance jurisdiction remains in U.S. DOT.
5. If a carrier has operated at least five round trips per week over a route for at least one year the carrier would be required, before abandoning the operation, to give at least 60 days notice to the Governor or Governors of the State or States involved.

Question. You note in your statement your support of the Motor Carrier Ratemaking Study Commission's recommendation that antitrust immunity for all bus industry collective ratemaking activities be eliminated. Why do you believe this immunity is not needed? Do you think the bus industry as a whole will be able to function efficiently without antitrust immunity for collective ratemaking?

Answer. Greyhound continues to support the total elimination of ICC rate jurisdiction, and the reduction of rate bureau immunity so as to embrace only those activities which are a necessary adjunct to the establishment of joint-line rates and fares and the division of such rates and fares among bus companies. Our position, however, was neither adopted nor advanced in a vacuum. Regulation encompasses government control of entry, exit and rates. We support the end of all three aspects of regulation at the same time. Our support of the end of ratemaking immunity is subject to the caveat that entry and exit regulation must terminate coincidently. From Greyhound's perspective, this is the only area of essential antitrust immunity.

The Bus Regulatory Reform Act of 1982 ("Bus Act") currently affords carriers antitrust immunity in the following areas:

1. General rate increases or decreases;
2. Broad changes in tariff structure;
3. Promotional or innovative fares; and
4. Changes in rules and regulations of general application.

None of these areas directly relates to the establishment and division of joint-line fares. Greyhound does not subscribe to the predictions of some that absent the existing level of immunity interline traffic would end. In fact, the Bus Act's elimination of collective action for single-line rates effective January 1, 1983, was generally a non-event. Likewise, the Bus Act's elimination of joint-line ratemaking effective January 1, 1984, was also a non-event.

It is noteworthy that under the Bus Act bus companies have increasingly pursued unilateral, independently established rates over their lines and, indeed, one large nationwide carrier initiated and implemented a total rate restructuring, all without the umbrella of collective ratemaking immunity. Bus companies have utilized the Bus Act's zone of rate freedom provisions both for single-line and interline purposes, again, without the umbrella of collective ratemaking immunity. Carriers today clearly are viewing collective rate actions as diminishing in importance.

Having said that, there nevertheless must be assurances that the requisite legal framework exists to ensure interline service so that such service can continue to be provided in an orderly manner. This basic view is premised on the proposition that the end of immunity must be preceded by the establishment of simple methods of establishing interline fares and appropriate systems of dissemination of fare information to the traveling public and interline carriers.

The Department of Justice has had a increasing awareness and a growing understanding of joint-line ratemaking in the transportation setting. Of particular significance, is DOJ's recognition that bus companies which are competitors between any two points may also interline traffic between those same points and simultaneously provide single-line and joint-line service.

The real world dictates that for passenger convenience and the availability of alternative scheduling that single-line and joint-line fares are generally equalized. For instance, if the single-line fare is less than the joint-line fare, few, if any, passengers

would ever utilize joint-line service. This is true because single-line service, without change of bus companies or even without a change of buses, is generally preferred by the passenger to joint-line service involving two or more carriers and a change of buses. Consequently, where single-line rates are less than joint-line rates, passengers would, in virtually all circumstances, choose the single-line service over the joint-line service.

On the other hand, it would be generally unacceptable for a carrier to have a joint-line rate less than a single-line rate between points between which it provides single-line service. It would be imprudent business judgment and, indeed, contrary to any reasoned business decisionmaking for a carrier to set up a system which would encourage use of competitors' service to the detriment of its own service. The consequence of these forces and pressures is that single-line and joint-line rates between the same points will tend to be equal. The mechanism which achieves this result must be protected in order to ensure the existing bus company's interchange of passengers and for efficient bus operations.

The Antitrust Division of the Department of Justice has recognized that the antitrust laws do not prohibit carriers with competing single line service from establishing joint-line rates between competitive points. Douglas H. Ginsburg, Deputy Assistant Attorney General has stated:

"Indeed, even carriers that offer competing single-line services between the same points could establish joint-line rates for services between those points, so long as those joint-line rates were established in good faith and were not intended as a device for collectively fixing the rates for their competing single-line services." ("ICC Practioner's Journal" September 1984, p. 589).

So long as this remains the enforcement posture of the Justice Department and constitutes a valid interpretation of the law, properly counselled bus companies can avoid the serious civil and criminal sanction for violation of the antitrust laws.

However, in order to eliminate any vestiges of concern which may arise out of a change in antitrust enforcement policy and to eliminate concerns regarding the breadth of permissive conduct, Greyhound strongly believes that legislation which totally eliminates antitrust immunity or which sunsets the ICC should support and affirm the present policy of the Justice Department.

Question. In your view, do any of the Interstate Commerce Commission's (ICC) regulations affecting the bus industry serve a useful public purpose?

Answer. Our answer is an emphatic "No", with the exceptions noted at the end of this answer. ICC regulations continue to be an impediment to carriers providing efficient bus service and no longer serve a useful public purpose. These regulations continue to be an impediment to passenger carriers' pricing initiatives and service offerings. While the ICC should be commended for its efforts in implementing the Bus Act, the residual regulatory framework places needless bureaucratic and regulatory delay in the way of a bus company's ability to respond to competitive service and pricing initiatives. This residual regulatory framework, while much more sensitive to market conditions, is still too cumbersome and too slow to permit bus companies to respond to intermodal competitors and marketplace dynamics.

The competitive marketplace provides a superior regulatory mechanism. Intermodal and intramodal competition for intercity travelers is extremely keen and competitors are aggressive in all areas. The private unregulated automobile is the principal competitor to the bus. Amtrak, the nationally subsidized rail system, is a formidable competitor in many major markets and is entirely unregulated. Airlines are unregulated and are particularly formidable competitors in many significant markets. Bus companies compete against each other and are aggressive competitors for passengers. Collectively, these competitors and the resulting competition have placed extreme pressures on bus companies' pricing, service offerings and financial results. Moreover, these competitive factors effectively discipline price, levels of service, quality of service and efficiency. Continued regulation by the ICC needlessly interferes with the bus companies flexibility to provide more efficient and better service, contrary to the public interest.

In the area of entry, the residual regulatory framework constitutes a needless bureaucratic barrier. Why should bus companies be faced with a delay of 180 days or more in obtaining operating rights? Why should not bus companies simply be permitted to provide increased and better service in new areas as and when they determine it to be feasible and appropriate? Should all bus companies be faced with burdensome bureaucratic barriers, even though most applications are no longer protested and the ICC grants virtually 100% of all filings? What possible benefit to the carriers or public interest could there be from that regulatory process?

With respect to rates, given the effective discipline of the competitive marketplace, why should not bus companies be permitted to instantaneously change their

rates, interstate and intrastate, in response to competitive factors and market dynamics? Why should carriers be required to prepare complex tariff filings? Why should tariffs be filed with regulatory agencies; be subject to their review and delay in implementation?

With respect to levels and quality of service, even historically, competition was the major dynamic, rather than any regulatory requirement of the ICC. The needs of the passenger and the shipper are paramount, and bus companies' responsiveness and attention to those needs dictate short-run and long-run survival.

We believe that the transition period afforded by the Bus Act overwhelmingly demonstrates that the role of the regulators should continue to diminish and that carrier managements are better placed to make the appropriate responses to public demands and competitive factors in order to provide better and more improved service.

The ICC regulations we have addressed are those normally associated with economic regulation. Other ICC regulations address non-economic issues, such as civil rights, smokers rights, baggage liability and other consumer rights. To the extent these are not already addressed by other laws or agencies, and to the extent it is necessary to continue them in effect, we see no reason why, coincidental with the end of economic regulation and sunset of the ICC, that such regulations shouldn't become the responsibility of other agencies.

Question. Do you believe that "sunset" of the ICC's bus industry regulatory functions would enhance competition in the industry?

Answer. Yes. The sunset of the ICC would enhance competition among bus companies. As was stated in response to question 2, the competition for the intercity traveler is extremely keen and bus companies are faced with intense intermodal and intramodal competition. Collectively, there are formidable competitors in the marketplace who place extreme pressure on bus companies resulting in an effective discipline on price, quality and service offerings. The residual regulatory requirements do not serve the public interest but, rather, impede the ability of bus companies to competitively respond to the dynamic marketplace. The elimination of the remaining regulatory barriers would enhance competition in the bus industry.

There is, however, one important caveat to the sunset of the ICC's bus regulatory function: namely, that such sunset should also include an express and explicit preemption of State laws, rules and regulations when an interstate bus company provides intrastate services. Many States still have a statutory framework modeled after the Motor Carrier Act of 1935 and these State statutes are interpreted and enforced in the same manner the ICC enforced the Motor Carrier Act at the height of regulation. For several of the States, parochial interests and political pressures overtake deliberate decisionmaking. Indeed, there have been several instances where a bus company has been "punished" by the State regulators because they had the temerity to assert their Federal rights under the Bus Regulatory Reform Act of 1982. Unless State laws, rules and regulations regarding rates, routes (entry and exit) and service are preempted, it will be impossible to achieve an efficient national bus system. The remaining hodge-podge of State regulation, often with inconsistent purpose, would frustrate the ability of bus companies to compete in the keenly competitive transportation environment. To ensure the continued development of intrastate motor passenger services by interstate carriers consistent with the national interests, preemption of State laws, rules and regulations relating to rates, routes (entry and exit) and service is essential.

DEPARTMENT OF TRANSPORTATION,
Salem, OR, October 16, 1984.

Hon. BOB PACKWOOD,
U.S. Senator, Russell Senate Office Building, Washington, DC.

Unable to attend the oversight hearings on the Bus Regulatory Reform Act of 1982, we present the following comments for your consideration and inclusion in the record.

A basic policy of the Act is to reduce barriers to entry into the intercity bus industry. In particular, eased entry is to facilitate the finding of replacement service on routes where carriers have exited. We are concerned that an inability to gain access to the terminals of the two major carriers, Greyhound and Trailways, effectively may bar entry for new operators wishing to serve small communities on abandoned routes.

Although generally willing to interline with new carriers, the major carriers resist terminal entry by new operators, including those providing feeder type services, because of the likelihood of these operators entering into direct competition

over some routes with the host company. Greyhound, in fact, is enjoined by a consent decree from evicting bus operators from its terminals on such a basis. In Oregon, Pacific Trailways recently asked Resort Bus Line to vacate its stations in Bend and Redmond in response to Resort instituting a competitive service.

Regardless of ownership, the viability of feeder bus routes may depend on the extent local services are complemented by connecting main line service. The ability to effectively ticket and transfer passengers and packages for off-line destinations may be essential in attracting a sufficient number of riders for any particular segment. From the traveling public's point of view, having to transfer from one station to another to continue one's journey increases the amount of time needed to make the trip and adds what may be a considerable degree of uncertainty and inconvenience.

The need for complementary connections is as important to a low-cost replacement service as it was for the Greyhound or Trailways service that preceded it. Insofar as access to a major carrier's terminals is representative of a complementary connection, then the lack of access should be viewed as a significant barrier to entry for the replacement services envisioned by Congress in the Act.

The studies we have seen considering the issue of entry barriers focus on the existence of scale economies within the intercity bus industry, specifically attempting to note differences in unit costs over a range of firm sizes. All concur that, if scale economies exist for some size range bus lines, they cease at output levels below those demanded in national or even regional markets.

These studies, however, only tend to look at the cost side of the picture. Primarily for reasons of data availability, they use bus miles rather than passenger miles as the primary measure of output. Therefore, if greater firm size leads to higher load factors on buses not offset by higher costs, then a form of scale economy may exist, which these studies will not identify. We believe network effects in the form of higher terminal utilization, more efficient transfers of passengers and packages, and schedule coordination represent forms of scale economies in local markets.

We are concerned that, because most examinations of the issue take a national market perspective, rely on traditional methods of analysis, and encounter recurring data problems, an inappropriate consensus will be reached concerning the barriers facing aspiring replacement bus companies. The market may not function as efficiently as these studies indicate and a number of communities unnecessarily may be left without service.

We request, therefore, Congress review the ICC/DOT Terminal Study with the importance of complementary connections and terminal access to small replacement carriers in mind. Although a local market perspective is appropriate for considering entry barriers for these firms, in sum they compose a national issue.

We also think Congress may wish to consider the appropriateness of public programs, at projected funding levels, such as the Formula Program for Non-Urbanized Areas (Section 18), in providing needed intercity services should significant impediments to an efficiently functioning private market be found.

Last, we wish to support the Motor Carrier Ratemaking Study Commission recommendation that "The U.S. Department of Transportation be requested to institute an on-going investigation of the impact of the Bus Regulatory Reform Act of 1982, focusing on persons over the age of 60, especially those living in small communities or rural areas, and on the continuation and development of intrastate bus service". insufficient time has passed to reach firm conclusions of how the intercity bus industry will function, especially in rural areas, and U.S. DOT involvement is appropriate.

We appreciate the opportunity to comment and look forward to working with you and your staff on these matters in the future.

FRED D. MILLER, *Director.*

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